



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

**OPR, MNR, MNDC, OLC, RP, FF**

### Introduction

This was a cross-application hearing.

The landlord has applied requesting an Order of possession for unpaid rent and cause, compensation for damage or loss under the Act and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The tenant applied requesting compensation for damage or loss under the Act, the cost of emergency repairs, an Order the landlord repair the unit and to cancel a Notice ending tenancy for cause.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

The parties confirmed receipt of each other's hearing package and the landlord's evidence within the applicable time-frames.

### Preliminary Matters

The parties confirmed that the landlord now has possession of the unit. The tenant vacated the unit on March 30, 2014. An Order of possession is not required and the tenant no longer wishes to dispute any Notice to end tenancy. As the tenant has vacated an Order for repairs is not required.

At the start of the hearing the tenant stated she had severed the landlord with evidence on April 25, 2014; that evidence was given to the Residential Tenancy Branch (RTB) on April 23, 2014. That evidence was not before me.

The tenant was informed that the evidence was not supplied at least 5 days prior to the hearing; as required by the Residential Tenancy Rules of Procedure. Evidence given to the RTB would have needed to be submitted no later than April 16, 2014, as the day of submission, statutory holidays, weekends and the day of the hearing are not counted in the calculation of days. As the landlord was given the evidence only 2 days prior to the hearing that evidence was also determined to be late. Therefore the tenant's evidence submission was not considered. The tenant applied for dispute resolution on March 10, 2014 and had ample opportunity to make her evidence submission.

The tenant said that, despite the details indicated on the application, she had applied requesting the cost of damaged property as the result of a flood. If that were the case the tenant would have had, at the time the application was submitted, an opportunity to supply estimates of costs and a detailed calculation of the claim. The tenant provided only a global sum of \$4,000.00 and no details of the claim.

The tenant asked for an adjournment so that she could supply evidence in support of her claim and in response to the landlord's claim. After considering section 6.4 of the Rules of Procedure I determined that the need for adjournment arose out of the neglect of the tenant. An adjournment is not meant to provide a party with an opportunity to prepare for a hearing. The tenant was given notice of the landlord's hearing within the applicable tie-frame.

In the absence of any evidence in support of a claim, such as verification of the sum claimed and a detailed calculation, I then dismissed the tenant's application.

The landlord's application included reference in the details section of a claim for damage; however, a claim for damage was not set out.

The tenant's application indicated a 2<sup>nd</sup> applicant. There was no evidence before me and no submission made regarding the status of that person. The tenancy agreement supplied as evidence did not include a 2<sup>nd</sup> tenant. Therefore, I have determined that the 2<sup>nd</sup> applicant on the tenant's application was not a tenant.

#### Issue(s) to be Decided

Is the landlord entitled to a monetary Order for unpaid rent and utilities?

Is the landlord entitled to filing fee costs?

#### Background and Evidence

The tenancy commenced on July 1 2013; rent was \$600.00 due on the 1<sup>st</sup> day of each month. The tenancy agreement supplied as evidence indicated that the tenant would pay 40% of hydro costs between May and October and 50% of the hydro between

November and April each year. The tenancy agreement required the tenant to pay 30% of natural gas costs. The tenant rented a basement suite.

A copy of the tenancy agreement was supplied as evidence.

The landlord has claimed the following:

BC Hydro to March 5, 2014	\$400.61
Fortis Gas to March 3, 2014	44.24
Past Utility costs	1,300.00
March 204 rent	600.00
<b>TOTAL</b>	<b>\$2,344.85</b>

The landlord supplied copies of a hydro bill for the period January 3 to March 3, 2014 in the sum of \$801.23. The bill was issued on March 5, 2014. The landlord has claimed 50% of the bill as the tenant's share.

A Fortis gas bill issued on March 3, 2014 for the period January 30 to March 3, 2014 indicated a total owed in the sum of \$32.72. The tenant's share claimed is 30%; \$44.24.

The tenant acknowledged that on February 8, 2014 she signed an agreement that she would pay \$500.00 for utilities owed from the past. The landlord has claimed sums agreed to be paid by 2 other occupants of the home who were in separate tenancies. A copy of the agreement supplied as evidence was hand-written, had items crossed out, indicated amounts owed by other individuals, included random calculations and notations.

The tenant said that on January 23, 2014 she paid rent plus \$200.00 toward utilities. The landlord issued her a receipt.

On February 1, 2014 the tenant paid the occupant of the upper unit \$300.00, for the balance of her rent owed and \$200.00 toward utilities. The occupant was collecting rent from other tenants of the home, to give to the landlord.

The tenant confirmed that she did not pay March 2014 rent in the sum of \$600.00.

### Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

I have considered the landlord's claim for hydro and gas utility costs. The tenant has agreed that she owed \$500.00 for past utilities, which is recorded in the agreement signed on February 8, 2014. That agreement was essentially a collection of hand-written notes that were disorganized, with items crossed out, that included notes in relation to other tenants and was, overall, difficult to discern. However, the tenant has agreed that on February 8, 2014 she did sign an agreement that she owed \$500.00 for past utility costs. The agreement signed by the tenant did not set out any dates, indicating the period of time that utility cost covered, but the parties agreed that they were for utility costs from past months of the tenancy.

I find, on the balance of probabilities, that the tenant did pay another occupant, who was acting as agent for the landlord, the sum of \$500.00 on February 1, 2014. The tenant read from a receipt that set out this payment. The landlord did not dispute payment of rent for February 2014 and it is then reasonable to accept that the additional \$200.00 paid on February 1, 2014 was meant to be applied to the utility arrears agreed to on February 8, 2014. Therefore, I find, on the balance of probabilities, that the landlord is entitled to \$300.00 for utility costs to February 8, 2014; as set out in the agreement signed by the parties.

The balance of the claim for \$1,300.00 is dismissed as those other costs were related to tenancies with other individuals.

I have accepted the sum owed, as claimed, for hydro and Fortis gas, as the bills were issued after the February 8, 2014 agreement for past bills was signed. The landlord has calculated the correct percentage owed by the tenant. Therefore, I find, pursuant to section 65 of the Act, that the landlord is entitled to compensation in the sum of \$400.61 for hydro costs between January 3 and March 3, 2014 and Fortis gas costs in the sum of \$44.24, incurred between January 30 and March 3, 2014.

I find that the \$200.00 payment the tenant said she made toward utilities on January 23, 2014 was prior to the February 8, 2014 agreement and would not have affected the sum agreed as owing on that date.

There was no dispute that March 2014 rent has not been paid. Therefore, I find that the landlord is entitled to compensation in the sum of \$600.00 for March rent.

Therefore, the landlord is entitled to following compensation:

	Claimed	Accepted
BC Hydro to March 5, 2014	\$400.61	\$400.61
Fortis Gas to March 3, 2014	44.24	44.24
Past Utility costs	1,300.00	300.00
March 2014 rent	600.00	600.00
<b>TOTAL</b>	<b>\$2,344.85</b>	<b>\$1344.85</b>

I find that the landlord's application has merit and, pursuant to section 72 of the Act that the landlord is entitled to recover the \$50.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

Based on these determinations I grant the landlord a monetary Order for the balance of \$1,394.85. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

### Conclusion

The landlord is entitled to a monetary Order for unpaid rent and utilities in the sum of \$1,344.85. The balance of the claim is dismissed.

The landlord is entitled to filing fee costs.

The tenant's claim is dismissed.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 29, 2014

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Residential Tenancy Branch

