



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNSD, FF

### Introduction

This hearing dealt with a landlord's application for an Order of Possession and Monetary Order for unpaid rent and utilities and authorization to retain the tenant's security deposit. The tenant did not appear at the hearing. The landlord's agent testified that the tenant was served with the landlord's original Application for Dispute Resolution and evidence by personal service at the rental unit on April 29, 2014 and the amended Application for Dispute Resolution and evidence by personal service at the rental unit on May 12, 2014. I accepted that the tenant was sufficiently served with the amended application and evidence and I proceeded to hear from the landlord without the tenant present.

The owner and his agent were present at the hearing and in this decision the use of the term "landlord" refers to both the owner and the agent.

The landlord confirmed that the tenant has vacated the rental unit and the landlord has regained possession of the unit. As such, I find that an Order of Possession is no longer required and I do not provide one with this decision. The landlord indicated that the tenant has left some abandoned possessions at the property. I refer the landlord to the abandoned property rules as provided in the Residential Tenancy Regulations. The landlord may contact the Residential Tenancy Branch or refer to the website [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca) for further information concerning abandoned property.

### Issue(s) to be Decided

1. Has the landlord established an entitlement to recover unpaid rent and utilities as claimed?
2. Is the landlord authorized to retain the tenant's security deposit?

### Background and Evidence

The tenancy commenced February 28, 2014 on a month to month basis. The tenant was required to pay rent of \$1,500.00 on the 1<sup>st</sup> day of every month. The tenant was also required to pay utilities. The tenant provided a cheque for the security deposit of \$750.00 and rent for March 2014; however, the cheque was returned for insufficient funds. Subsequent cheques provided to the landlord were not negotiable as there were errors on the cheques. The tenant eventually paid \$700.00 toward the security deposit on March 31, 2014; however, the landlord did not receive any money for rent for March or April 2014. On April 22, 2014 the tenant informed the landlord that she would be moving out of the rental unit at the end of April 2014. On April 23, 2014 the landlord personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) with a stated effective date of April 30, 2014. The Notice indicates rent of \$3,050.00 was outstanding and \$289.78 in utilities. The tenant did not pay the outstanding rent or utilities and vacated the rental unit on May 2, 2014. On May 12, 2014 the tenant returned to the property to retrieve possessions she had left behind.

The landlord submitted that it was expected that the tenant would put the utility accounts in her name since the rental unit was a single family dwelling; however, she did not and utility bills came to the landlord.

The landlord submitted that the tenant left the rental unit dirty and damaged. The landlord has cleaned and made repairs and has entered into a new tenancy set to commence mid-July 2014. Since this Application was not amended to deal with a damage claim I did not consider this evidence further. The landlord was informed of the right to file another Application for Dispute Resolution in order to pursue a damage claim.

By way of the amended Application that is before me, the landlord requested compensation for the following:

Unpaid and/or loss of rent: March – May 2014	\$ 4,500.00
Unpaid utilities:	
Forits gas (March 1 – 12)	101.57
Fortis gas (March 13 – April 10)	162.10
BC Hydro (Feb 28 – March 17)	26.11
Estimated utilities up to April 30	250.00
Unpaid security deposit	<u>50.00</u>
Total claim	\$ 5,089.78

After amending the Application for Dispute Resolution on May 12, 2014 the landlord received more utility bills and has included them in his evidence. I have considered those utility bills and amended the claim further since the actual bills were less than the estimate included in the original claim. The utility bills received after May 12, 2014 were as follows: a Fortis bill for the period of April 10 – May 12 in the amount of \$92.30 and a BC Hydro bill for the period of March 18 – May 15 in the amount of \$63.25.

### Analysis

Under the Act a tenant is required to pay rent when due in accordance with their tenancy agreement. Based upon the evidence before me, I find the tenant failed to pay rent that was due for March and April 2014 and I award \$3,000.00 to the landlord for those months.

Where a tenant does not pay rent the landlord is at liberty to issue a 10 Day Notice to End Tenancy for Unpaid Rent. I accept the evidence before me that the landlord served the tenant with a 10 Day Notice to End Tenancy on April 23, 2014. Based upon the requirements of the Act, the effective date must have read no earlier than May 3, 2014 and where an effective date is non-compliant it automatically changes to comply with the Act. Therefore, the tenant was legally required to vacate the rental unit by May 3, 2014 based upon the 10 Day Notice served upon her.

To avoid responsibility for paying for loss of rent for May 2014 the tenant would have had to give the landlord one full month of written notice to end the tenancy on or before March 31, 2014. The tenant did not do so in this case.

Considering the tenancy was set to come to an end May 3, 2014 pursuant to the 10 Day Notice; the tenant vacated the rental unit on May 2, 2014 and the tenant failed to give the landlord sufficient notice to end the tenancy prior to May 2014 I find the tenant legally responsible for paying rent for May 2014. Therefore, I grant the landlord's request to recover loss of rent for the month of May 2014 from the tenant.

In addition, I accept the undisputed evidence that the tenant was required to pay for utilities and she failed to do so. Upon review of the utility bills I award the landlord the amount of the utility bills presented to me as evidence. I have permitted the landlord to recover utilities that may have been consumed after the tenant vacated in May 2014 as the landlord would not have paid utilities in May 2014 if the tenant had fulfilled her legal obligations under the tenancy agreement and the Act to pay rent and give sufficient notice to end the tenancy. Therefore, I award the landlord the following amounts for utilities:

Forits gas:  $\$101.57 + \$162.10 + \$92.30 = \$355.97$

BC Hydro:  $\$26.11 + \$63.25 = \$89.36$

Total utilities awarded:  $\$355.97 + \$89.36 = \$445.33$

I make no award for the unpaid portion of the security deposit as the tenancy has ended and because security deposits are used to offset amounts owed to a landlord.

Therefore, I authorize the landlord to retain the \$700.00 the tenant paid toward the security deposit in partial satisfaction of the rent owed the landlord. I also award the landlord \$50.00 for the filing fee paid for this Application.

In light of all of the above, the landlord is provided a Monetary Order calculated as follows:

Rent: March – May 2014	\$ 4,500.00
Utilities	445.33
Filing fee	50.00
Less: security deposit	<u>(700.00)</u>
Monetary Order	\$ 4,295.33

The landlord must serve the Monetary Order upon the tenant and may enforce it in Provincial Court (Small Claims) as necessary.

### Conclusion

The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance of \$4,295.33 to serve and enforce as necessary.

This decision 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: June 18, 2014

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Residential Tenancy Branch

