



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the tenant – MNDC, FF

For the landlord – MNR, FF

### Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application. The landlord applied for a Monetary Order for unpaid rent or utilities and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the conference call hearing and gave sworn testimony. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord entitled to a Monetary Order for unpaid utilities?

### Background and Evidence

The parties agreed that this tenancy started on January 01, 2014 for a fixed term tenancy that was due to end on December 31, 2015. Rent for this unit was \$2,400.00 per month due on the 1<sup>st</sup> of each month.

The tenant testified that the landlord served the tenant with a Two Month Notice to End Tenancy for landlord's use of the property because the landlord had sold the house. This Notice is dated September 01, 2014 and has an effective date of October 31, 2014. The Notice was served upon the tenant on September 03, 2014. The tenant testified that he moved from the unit on September 30, 2014; however, the tenant testified that he had sublet the basement and those tenants did not vacate the rental unit despite the tenant serving his sublet tenants with a Two Month Notice to End Tenancy.

The tenant testified that he did not provide the landlord with a 10 day written Notice to end the tenancy earlier than the effective date of the Notice. The tenant agreed that he did not pay rent for October and seeks compensation of \$2,400.00 for the Two Month Notice received by the landlord.

The landlord testified that the new owner took possession of the unit on September 29, 2014. When the Two Month Notice was served upon the tenant the landlord explained to the tenant that the new owner was aware this tenancy was not due to end until December 31, 2014 and therefore the tenant could continue to live in the unit until that date. The tenant moved from the unit and did not return the keys until October 08, 2014. The landlord testified that the tenant's subtenants are still living in the basement but does not know if they have an arrangement with the new owners of the unit.

The landlord testified that the tenant has already received compensation for the Notice as no rent was paid for October and the tenant's subtenants remained in possession of the unit during October.

The landlord testified that the tenant was responsible for utilities and failed to pay the final hydro and gas bills. The landlord testified that copies of these bills were provided to the tenant with the landlord's application on January 22, 2015. The landlord seeks to recover the sum of \$172.84 for these utility bills.

The tenant agreed that these utilities are owed and will pay the landlord \$172.84 on or before February 21, 2015 which will be 30 days after receiving the bills.

### Analysis

When there is a fixed term tenancy in place and that tenancy does not end until December 31, 2014 the landlord may not issue a two Month Notice to End Tenancy on a date that is earlier than December 31, 2014. In this matter the landlord did serve the tenant with a Two Month Notice and although the landlord has testified that the tenant did not have to vacate the rental unit until December 31, 2014 the tenant's choose to vacate the rental unit sooner.

I have considered the evidence before me and am satisfied that the tenant vacated the rental unit in accordance with the Two Month Notice; the tenant is entitled to compensation for that Notice equivalent to one month's rent and may withhold rent for the last month of their tenancy in accordance with s. 51 of the *Act*. I further find that the tenant had sublet the basement of the unit and the tenant became the landlord to the sublet tenants. The sublet tenants remained in possession of the rental unit throughout October and although the tenant vacated at the end of September, 2014 the tenant effectively still had possession of the rental unit as his sublet tenants had not vacated.

I am satisfied that the tenant did not pay rent for October, 2014 and therefore as the tenant's sublet tenants remained in possession of the rental unit throughout October this rent would be considered compensation for the Notice. Consequently, this tenancy ended on October 31, 2014 in accordance with the Two Month Notice. The tenant has already received compensation in the form of a rent free month for October and no further compensation is due to the tenant. The tenant's application for compensation of \$2,400.00 is dismissed.

As the tenant's claim as little merit the tenant must bear the cost of filing his own application.

With regard to the landlord's application for unpaid utilities; the tenancy agreement clearly indicates that the tenant is responsible for their own utilities. I am satisfied from the undisputed evidence before me that the final utilities remain unpaid by the tenant to an amount of \$172.84.

This is comprised of \$106.04 for BC Hydro from September 10 to October 09, 2014 of \$106.04 and Fortis Gas from September 11 to October 09, 2014 of \$66.80.

However, a landlord is required to provide any utility bills to the tenant with a written demand for payment within 30 days. As the parties agreed the tenant received the utility bills on January 22, 2015 the tenant has until February 21, 2015 to pay the outstanding utilities. The tenant has agreed to pay the utilities of \$172.84 by this date and therefore I will issue the landlord with a Monetary Order effective on February 21, 2014. This Order can be served upon the tenant on that date if the tenant has not paid the outstanding utilities. If the utilities are paid by the tenant then the Monetary Order becomes null in void.

As the landlord's claim for utilities is premature I find the landlord must bear the cost of filing their own application.

### Conclusion

The tenant's application is dismissed without leave to reapply.

The landlord's application is dismissed as it is premature.

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: February 05, 2015

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Residential Tenancy Branch

