



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, ERP, RR, FF, O

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking an order for emergency repairs and for a rent reduction.

The hearing was conducted via teleconference and was attended by both tenants; both landlords and the landlords' legal counsel.

At the outset of the hearing the tenants submitted that a number of issues were already resolved between the parties and that they only now sought to have a determination of change in the amount of utilities they should be responsible for and for compensation for the purchase of grass seed and fertilizer they had purchased. I amend the tenants' Application to exclude the other matters laid out in their original Application.

In response to the tenants' Application for Dispute Resolution the landlords have submitted a substantial volume of evidence. In their written statement included with that evidence the landlords stated: "The Landlords respond to the Tenants' application for dispute resolution under file No. 837979 and submit a counter-application for a monetary order" [reproduced as written].

However, the landlords did not submit an Application for Dispute Resolution or pay a filing fee to make such a monetary claim to be heard at the same time as this hearing. The parties confirmed they have another hearing next week in which the landlord has sought a monetary claim against the tenants, among other issues.

### Issue(s) to be Decided

The issues to be decided are whether the tenants entitled to an order for a reduction their proportion of utilities; to a monetary order for the reimbursement of grass seed and fertilizer; and to recover the filing fee from the landlords for the cost of the Application for Dispute Resolution, pursuant to Sections 65, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The parties submitted into evidence a copy of a tenancy agreement signed by the parties on February 14, 2015 for a 1 year fixed term tenancy beginning on April 1, 2015 for a monthly rent of \$1,500.00 due on the 29<sup>th</sup> or 30<sup>th</sup> of each month with a security deposit of \$750.00 paid. No utilities were included in the rent. There were no addendums with any additional terms to the tenancy agreement.

The parties agreed that when negotiating the tenancy agreement all parties were of the understanding that the landlords would be living out of province and that the rental unit in the basement would remain empty. However due to unforeseen circumstances the landlords had to return to British Columbia and are currently living in the basement rental unit.

The landlords submitted that in consideration of a number of different factors they provided a reduced rent from what the market rates are for rentals in their area. The landlords submitted a list of current available rental units and prices in their area. The landlords did not indicate the source of the advertisements although it appears to be taken from Craigslist.

The landlords provided into evidence a chain of emails beginning January 25, 2015 in which the female landlord outlines some basic facts about the residential property and the requested rent.

The landlord's email states there are 2 levels with a 2 bedroom basement suite and the upper level having 3 bedrooms; 2 baths etc. and listing the price at \$1,500.00 for the upper unit only or \$1800.00 for both units plus utilities. This email goes on to say that if the tenants don't want the basement rental unit it would remain empty.

The tenants seek an adjustment to their tenancy agreement to reduce the amount they are required to pay for utilities. The tenants specifically identified hydro and gas utilities as the utilities under consideration. They seek a 60 – 40 split, in which the tenants would be responsible for 60% of the utilities and the landlords 40%.

In support of their claim the tenants submit that based on the square footage of the two units the landlords have 35% of the floor space. They also indicate that because they have two adults and two very young children and the landlords have 3 adults living in their respective units it is likely the landlords will use 40% of the utilities. The tenants also submit a small sample of changes in the usage that they attribute to differences since the landlords returned.

The landlords submit that based on the square footage of the property they live in 22% of the total square footage and submit that the split should be 22 – 78, where the landlords will pay 22% and the tenants 78%. The landlords submit that during the sample period the tenants submitted they had not moved into the rental unit for any more than 5 days.

The landlords also seek to have the security system considered in this change. The landlords submit the tenants were to pay the full monthly costs of the security system and that this should be included in the breakdown of utilities.

The tenants also seek to have the landlords put the utilities in their name. The landlords are not opposed to doing so and will once it is determined what percentage each should pay.

The tenants also seek compensation in the amount of \$63.96 for the cost of grass seed and fertilizer that the landlords had agreed to pay but have to do so. The tenants submit that when they had originally looked at the property the landlords were completing some landscaping work but that not all the grass had been established.

They submit that the landlord agreed to have them pick up additional grass seed and fertilizer. In support of their claim the tenants have submitted a copy of an email from the female landlord dated June 6, 2015 that states: "Chris, i will write the cheque for grass seeds expences, but about the stairs we are not ready now to pay" [reproduced as written]. The tenants have also submitted copies of receipts dated March 13, 2015; March 30, 2015 and April 9, 2015.

The landlords submit that they only agreed to pay these costs because they were under a lot of pressure. They submit that there were no notations on the condition inspection report regarding the need for this work. They also submit that one of the tenants' obligations for such a reduced rent was to maintain the landscaping. The further state that the receipts pre-date the start of the tenancy.

### Analysis

First, in regards to what should be considered as utilities I note that there are no addendums in the tenancy agreement that specifically outlines what is meant by "utilities". Further, there is no specific definition in the *Act* of what services or facilities would be defined as utilities.

Black Law Dictionary, 7<sup>th</sup> Edition defines a utility as "a business enterprise that performs essential public service and that is subject to governmental regulation." Black's further outlines that a public utility is "a company that provides necessary services to the public, such as telephone, electricity, and water."

As such, I find that the provision of security services is not a necessary or essential public service and therefore does not fall within the definition of utilities for the purposes of a tenancy. I further note that this Application is from the tenants who were only seeking a determination of what their portion of hydro and gas should be.

For these reasons, I have excluded the issue of the tenants' obligation to pay for security services from the issues before me today and I make no rulings on the landlords' submissions regarding these services.

From the testimony and evidence of both parties I find that there is insufficient evidence to determine a specific breakdown of what should be split between the tenants and the landlords in terms of the amount of utilities. In addition, since it appears that there are not separate meters for each unit for either hydro or gas I find there is no mechanism to determine an exact split in proportions of utility costs.

I also find that the determination of an exact proportion of either gas or hydro costs cannot be determined simply on the basis of square footage of the respective units. I find this determination is much more complicated and must include, but is not limited to, such variables as the amount of time each member of the family spends in their respective units; how many lights they leave on; how many electronic devices that they use within their homes and many more.

As such, in the absence of sufficient empirical data I find the parties should split the cost of the utilities of gas and hydro on a 50/50 basis, effective from the date the landlords moved into the rental unit.

While the landlords agree the utilities should be registered in their name I note that they have not yet made the arrangements to do so. As such, I order the landlords must immediately have both the utilities of hydro and gas registered in their names. I also order that the landlord must provide the tenants with copies of the utility bills when seeking payment for the tenant's portion and the tenants must pay these amounts within 30 days of receipt of copies of each bill.

As to the tenants' claim for compensation for grass seed and fertilizer I find that there is insufficient evidence to establish whether or not the landlords had agreed prior to the purchase of these supplies. However, I am satisfied that the landlord did agree to pay for them after the purchases.

I find the landlord has failed to provide any evidence that the tenants applied any undue pressure to pay for these costs. Finally, I am not persuaded by the landlord's argument that the receipts pre-date the tenancy. I am satisfied that two of these purchases were made at least within 3 weeks of the start of the tenancy and the third was made after the start of the tenancy. As such, I am satisfied that the tenants purchased these items for this tenancy.

Based on the above, I find the tenants are entitled to receive compensation in the amount of \$63.96.

### Conclusion

I find the tenants is entitled to monetary compensation pursuant to Section 67 in the amount of **\$113.96** comprised of \$63.96 for grass seed and fertilizer and the \$50.00 fee paid by the tenants for this application.

This order must be served on the landlords. If the landlords fail to comply with this order the tenants may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: September 30, 2015

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Residential Tenancy Branch

