



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MND; MNR; MNSD; MNDC; FF

### **Introduction**

This is the Landlords' Application for Dispute Resolution seeking a monetary award for unpaid rent and damages; compensation for damage or loss under the Act, regulation or tenancy agreement; to apply the security deposit towards their monetary award; and to recover the cost of the filing fee from the Tenants.

This matter was convened on July 24, 2015, and adjourned so that the Landlords could re-serve the Tenant GH at his address for service because the Tenants were no longer residing at the same address. The Tenant CH acknowledged receipt of the Notice of Hearing documents and documentary evidence. The Tenant GH stated that if the Landlords sent the documents to CH's address, he would be sure to communicate with CH and pick them up from her. CH did not object.

I also made the following Orders:

- that no further documentary or electronic evidence may be submitted by either party, pursuant to the provisions of Rule 3.19 of the Rules of Procedure; and
- that attendance at the reconvened Hearing was mandatory and that if a party did not attend, a decision and order may be made in their absence.

An Interim Decision was provided to the parties on July 28, 2015, which should be read in conjunction with this Decision. The Residential Tenancy Branch provided copies of the Notice of Reconvened Hearing to the parties when the Interim Decision was mailed out.

The Landlords stated that they sent their documentary evidence to the Tenant GH by registered mail sent September 29, 2015, at the Tenant CH's address. The Tenant stated that he was working out of town, and did not receive the documentary evidence. He stated that the Landlords knew he would be out of town at the time the package was sent. The Landlords denied that they were aware of the Tenant GH's work schedule. I asked the Landlords why they waited to re-serve the Tenant GH. They responded that they were waiting for the original registered package to be returned from Canada Post.

On July 24, 2015, I asked the Tenant to provide an address so that the Landlords could re-serve him with documents. The Tenant gave the same address as CH's address and said that he would be sure to communicate with her to pick it up. The Tenant did not wish to provide his

current residential address. The Tenant GH did not provide dates when he would not be communicating with the Tenant CH because he was out of town.

For the reasons provided above, I find that the Landlords have sufficiently served the Tenant GH with documentary evidence. The Tenant CH did not sign into the Hearing on October 14, 2015, and the Hearing continued in her absence.

### **Issues to be Decided**

- Are the Landlords entitled to compensation for loss of revenue for the month of September, 2014 and unpaid utilities?
- May the Landlords apply the security deposit towards their monetary award?

### **Background and Evidence**

#### **The Landlords gave the following testimony:**

This tenancy began on September 1, 2013. Monthly rent was \$900.00, due on the first day of each month. Utilities were in the Landlords' names and were sent to the upstairs occupant, who paid half of the bill and then provided the Tenants with the bill, who then were responsible for paying the other half. The Tenants paid a security deposit in the amount of \$450.00 and a pet damage deposit in the amount of \$200.00.

The Landlords testified that on August 22, 2014, the Tenants sent the Landlords a text message advising that they would be moving out on September 15, 2014. The Landlords stated that they attempted to re-rent the rental unit, but were unable to re-rent it until October 1, 2014. They testified that the Tenants gave the Landlords a cheque for September rent, but it bounced on September 10, 2014. The Landlords seek a monetary award in the amount of **\$900.00** for September, 2014 rent.

The Landlords testified that the Tenants did not pay their share of the hydro and gas bills. The Landlords provided copies of bills in evidence. The Landlords testified that the upstairs tenant paid her share of the utilities on time. The Landlords seek **\$267.11** for unpaid gas bills and **\$595.51** for unpaid utilities. The Landlords stated that the Tenants gave the Landlords a cheque in the amount of \$215.00 to go towards their unpaid utilities, but it bounced.

The Landlords provided copies of bank statements in evidence.

The Landlords also seek a monetary award in the amount of **\$200.00** for damage caused by their dogs, and **\$150.00** for the cost of removing garbage from the rental property left by the Tenants. The Landlords provided photocopies of photographs in evidence.

#### **The Tenant GH gave the following testimony:**

GH testified that the parties agreed that the Tenants didn't have to pay rent for September, 2014. He stated that the Landlords accepted the Tenants' notice to end the tenancy that he sent by text on August 22, 2014.

GH stated that he paid cash for rent and utilities every month, but the Landlords did not give him receipts. He agreed that he owed some money for utilities, but stated that it was only \$215.00, which he paid to the Landlords. GH testified that he was having "trouble with the Landlords", so he closed his bank account down.

GH questioned one of the gas bills, which is for service from June 4 to July 5, 2015, which is after the tenancy ended.

The Landlords gave the following reply:

The Landlords acknowledged that they had provided the bill from the wrong year in error.

### **Analysis**

Section 45 of the Act requires a tenant to provide notice to end a tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and is the day before the day in the month that rent is payable. Section 52 of the Act provides that, in order to be effective, a notice to end tenancy must be in writing and signed by the person giving the notice. I find that the text message provided by the Tenants does not comply with Section 52 of the Act. In any event, a valid notice to end tenancy given on August 22, 2014, would have ended the tenancy on September 30, 2014. Therefore, I find that the Tenants were responsible for paying September's rent. I do not accept GH's testimony that the parties agreed the Tenants did not have to pay rent for September. The Tenants did not provide documentary evidence of any such agreement or sufficient evidence that would persuade me, on the balance of probabilities, that the Landlords waived their rights to rent for the month of September, 2014.

The Landlords provided copies of their bank statements, which indicate that cheques in the amounts of \$900.00 and \$215.00 were both returned, insufficient funds. Based on the dates of the bank transactions and the amounts of the cheques, I accept the Landlords' testimony that these cheques were for September's rent and for partial payment towards utilities. I do not accept GH's testimony that the Tenants always paid rent and their share of utilities in cash. GH acknowledged paying \$215.00 towards utilities and, as stated above, I am satisfied that September's rent was also given in the form of a cheque, although it was not honoured by the bank.

Therefore, I find that the Landlords have established their claim for unpaid rent for the month of September, 2014, in the amount of **\$900.00**.

The Landlords acknowledged that they had provided one of the gas bills in error. Therefore, I have calculated the amount the Tenants owe for utilities, after deducting the upstairs tenant's share, as follows:

Hydro bill dated June 6, 2014		
Balance past due	\$302.24	
Late payment charges (Tenants')	\$7.01	
Tenants' share of current charges		
(April 4 to June 4, 2014) = \$182.84/2	<u>\$91.42</u>	
TOTAL		\$400.67

Hydro bill dated August 7, 2014		
Late payment charges (Tenants')	\$11.93	
Tenants' share of current charges		
(June 5 to August 5, 2014) = \$192.28/2	<u>\$96.14</u>	
TOTAL		\$108.07

Hydro bill dated October 7, 2014		
Late payment charges (Tenants')	\$17.84	
Tenants' share of current charges		
(August 6 to October 3, 2014 = 59 days)		
(August 6 to September 30, 2015 = 56 days)		
(\$168.33 x 56 days/ 59 days) / 2	<u>\$79.89</u>	
TOTAL		\$97.73

Gas bill dated September 25, 2014		
Balance past due (including late charges)	\$174.83	
Tenants' share of current charges		
(August 5 to September 3, 2014) = \$54.88/2	<u>\$27.44</u>	
TOTAL		\$202.27

Gas bill dated October 24, 2014		
Late payment charges (Tenants')	\$3.45	
Tenants' share of current charges		
(September 4 to October 2, 2014 = 29 days)		
(September 4 to September 30, 2015 = 27 days)		
(\$67.90 x 27 days/ 29 days) / 2	<u>\$63.22</u>	
TOTAL		<u>\$66.67</u>

TOTAL UTILITIES OWED		<b>\$875.41</b>
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I find that the Landlords did not provide sufficient evidence to prove their claim for the cost of repairs and junk removal. The Landlords did not provide receipts and therefore, this portion of their application is dismissed.

Pursuant to Section 72(2)(b) of the Act, the Landlords may apply the security deposit and pet damage deposit towards partial satisfaction of the Landlords' monetary award.

The Landlords have been successful in their application and I find that they are entitled to recover the cost of the **\$50.00** filing fee from the Tenant.

I hereby provide the Landlords with a Monetary Order, calculated as follows:

Unpaid rent	\$900.00
Unpaid utilities	\$875.41
Recovery of the filing fee	<u>\$50.00</u>
Subtotal	\$1,825.41
Less deposits	<u>- \$650.00</u>
<b>TOTAL AMOUNT DUE TO THE LANDLORDS AFTER SET-OFF</b>	<b>\$1,175.41</b>

### **Conclusion**

I hereby provide the Landlords with a Monetary Order in the amount of **\$1,175.41** for service upon the Tenants. This Order may be filed in the Provincial Court of British Columbia (Small Claims) and 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: October 22, 2015

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Residential Tenancy Branch

