



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNR, MNSD, FF

### Introduction

This was a hearing with respect to the landlord's application for a monetary award and an order to retain the security deposit. The hearing was conducted by conference call. The landlord and the named tenant called in and participated in the hearing. The landlord provided documentary evidence to the Residential Tenancy Branch and to the tenant prior to the hearing.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award and if so, in what amount?

Is the landlord entitled to retain all or part of the security deposit?

### Background and Evidence

The rental unit is a suite in a residence in Sechelt. The tenancy began on October 1, 2014 for a fixed term ending April 30, 2015. The monthly rent was \$750.00 plus a charge of \$48.00 per month for internet services. The tenant was responsible for utilities. The tenant paid a security deposit of \$375.00.

The landlord testified that the tenants failed to pay the full rent for March and failed to pay Hydro bills. The landlord served the tenant with a 10 day Notice to End Tenancy for unpaid rent. The tenant moved out of the rental unit on March 19, 2015. The tenant paid \$150.00 on account of March rent. The landlord said that he did not receive the tenants' forwarding address until he received a letter from the tenant on May 20, 2015, demanding the return of the security deposit. He filed his application seeking a monetary order shortly after he received the tenants' letter with a forwarding address.

The landlord claimed past unpaid Hydro bill in the amount of \$328.00, a current Hydro bill to March 18<sup>th</sup> in the amount of \$98.00 and pro-rated rent for rent to March 19<sup>th</sup> in the

amount of \$505.00 for a total of \$931. The landlord requested payment of the sum of \$406.00, being the balance after deducting the tenants' \$150.00 rent payment for March and the \$375.00 security deposit

The tenant opposed the landlord's claim. She testified that the landlord made verbal assurances to her that the cost of electrical utilities would not exceed a certain amount. She claimed that the landlord misled her about the cost to heat the rental unit and she said that the Hydro bills were far higher than what the landlord said they would be. The tenant said that living in the house became intolerable because it was cold, damp and mouldy due to the fact that she had to keep the heat turned down because of the outrageous expense to heat the rental unit. She complained that she was responsible for the cost to heat the whole property although she was occupying only the lower suite.

The landlord disputed the tenant's testimony. He said that he gave the tenant an accurate statement of the average monthly cost for electricity. The landlord testified that the rental unit has a built-in dehumidifier and there had never been any issues with damp or mould in the rental unit. The landlord said that the upper unit was vacant and unoccupied during the tenancy and it was not contributing to the cost of the Hydro bills. The landlord submitted that he was entitled to a monetary award in the amount claimed.

### Analysis

The tenants agreed to rent the unit on the terms set out in the written tenancy agreement. By that agreement they were obliged to pay the utility bills. The tenant is attempting to alter the terms of the written agreement by reference to what she claims were oral discussions concerning the cost for electricity to heat and service the rental unit with power.

The following is a concise statement of the "parole evidence rule", a principle of evidence with specific application to the interpretation of written contracts.

It has long been a substantive rule of law in the English speaking world that in the absence of fraud or mutual mistake, oral statements are not admissible to modify, vary, explain or contradict the plain terms of a valid written contract between two parties.

It should be noted that there is a very sound basis for the rule for to consider any or every oral statement made by one party or the other during contract negotiations so as to vary, modify, or contradict the plain language finally adopted could throw the best written contract into doubt, and constant turmoil.

Where a contract is clear and unambiguous, oral statements or reservations made by either party do not change it.

If terms of the contract are ambiguous or clearly susceptible to more than one meaning then parole evidence is admissible to show what the parties meant at the time of making the contract and how they intended it to apply.

I find that there is no ambiguity in the terms of the written tenancy agreement; it required the tenants to pay for utilities and there was no cap or limit placed on the amount to be paid. I have therefore discounted the tenant's evidence as to verbal assurances given by the landlord and I note that in any event that the landlord has testified that he made statements concerning the average monthly costs which were accurate.

I find that the landlord is entitled to a monetary award in the amount claimed for utilities and pro-rated rent for March in the total amount of \$406.00 after deduction of the \$150.00 March rent payment and the \$375.00 security deposit applied in partial satisfaction of the amount claimed.

#### Conclusion

The landlord is entitled to recover the \$50.00 filing fee for this application, for a total award of \$456.00 and I grant the landlord an order under section 67 in the said amount. This order may be registered in the Small Claims Court 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: December 3, 2015

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Residential Tenancy Branch

