



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

For the tenants – CNL, MNDC, O

For the landlords – OPL, FF

### Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenants applied to cancel a Two Month Notice to End Tenancy for landlords use of the property; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement and other issues. The landlords applied for an Order of Possession for landlords use of the property; and to recover the filing fee from the tenants for the cost of this application.

At the outset of the hearing the parties advised that the tenants are no longer residing in the rental unit, and therefore, the landlords withdraw their application for an Order of Possession and the tenants withdraw their application to cancel the Two Month Notice.

The tenants and the landlord RP attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlords and tenants provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?

### Background and Evidence

The parties agreed that this tenancy started on June 15, 2012 for an initial term of one year, thereafter reverting to a month to month tenancy. Rent for this unit was \$1,500.00 per month. The tenants paid a security deposit of \$750.00 and a pet deposit of \$400.00 on May 17, 2012.

As the tenants vacated the rental unit on December 31, 2015 the hearing will proceed with the tenants' application for a Monetary Order. The tenants testified that the tenancy agreement states that utilities are not included in the rent and the tenants are therefore responsible for their own utilities including Hydro. The tenants testified that they thought their Hydro bills were substantially higher than their Hydro bills for their previous larger home. The tenants called BC Hydro to inquire why their bills were so high during the three and half years of their tenancy. BC Hydro informed the tenants that there was only two meters located at this farm, one of which included the tenants' rental house, the landlords' house, the barn, shops and chicken coops. The second meter was for the farm water shed only. BC Hydro were concerned about this and sent someone to the farm to investigate. The tenants also got in an electrician to investigate. Their electrician informed the tenants that their home, the landlords' home and the farm buildings were all hooked up to the one meter. The tenants referred to the letter from their electrician, photographic evidence showing the wiring from the meters and information from BC Hydro provided in documentary evidence.

The tenants testified that they spoke to the landlord RP about this issue on October 19, 2015 and were told by the landlord that they knew that they had to pay the Hydro for the entire farm. The tenants testified that they were not made aware of this at the start of their tenancy and it is not documented in either their tenancy agreement or their addendum to the tenancy agreement. The tenants testified that they informed the landlord that he must separate their rental house from the Hydro for the farm and the landlords' home. The next day the landlords had electricians in to separate the Hydro for the rental house and the farm. This was verified by the tenants on October 21, 2015.

The tenants seek to recover the Hydro they have been paying from June 15, 2012 to October 20, 2015 for the landlords' home and the farm. Since October 30 to December 31 when the tenants vacated the rental unit they have provided Hydro bills showing the amounts consumed during this period when they had separate billing for their rent unit alone. The tenants also referred to the information from BC Hydro showing the consumption used for the last three and a half years of their tenancy each month. This information shows the Hydro consumption peaked in the summer and the winter months. The tenants have calculated an average amount for their personal use of Hydro for their rental unit between a half and a third of the Hydro bills they had been paying based on this information. The total amount paid in Hydro was \$6,508.11 over the 38 billing cycles. Based on their average consumption being half to a third of each bill in the billing cycle they calculated that they should have paid \$2,147.67 and therefore calculate that they have overpaid hydro for the landlords' house and farm to an amount of \$4,360.44.

The tenants testified that they requested the landlords reimburse the tenants for the Hydro for his property but the landlord RP refused to speak to the tenants and just said Hydro was part of their rent. The next week the landlords handed the tenants a Two Month Notice to End Tenancy for landlord's use of the property. The tenants seek to recover \$4,000.00 from the landlord for this overpayment of Hydro plus the \$50.00 filing fee.

The landlord disputed the tenants' claim. The landlord testified that the tenants were aware that they had to pay Hydro for the entire farm and the landlords' house as the landlord had reduced the rent for the rental unit. The landlord testified that in 2009 to 2011 the landlords paid 25 percent of the Hydro bills so he decided to give the tenants a reduced rent instead for this tenancy. The landlord testified that in addition to this they did not raise the rent for three years for the Hydro costs. The tenants had verbally agreed to pay all the Hydro as this is how the property was wired up when the landlords purchased the farm.

The landlord testified that on October 19, 2015 when he had a discussion with the tenant about separating the rental unit from the farm's Hydro the tenants were told that they would have to pay a higher rent.

The tenants disputed the landlords' claim that they had verbally agreed to pay all the Hydro for the farm and landlords' house or that the landlord had reduced the rent to compensate for

Hydro. The tenants testified that the rent the tenants paid was as listed on Craigslist for the unit when they first saw the unit advertised.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I refer the parties to the Residential Tenancy Policy Guidelines #1 which provides guidance to parties regarding the responsibilities of landlords and tenants for the residential premises. One of the sections of this guidelines deals with shared utilities and states in part that a term in a tenancy agreement which requires a tenant to put the electricity, gas or other utility billing in his or her name for premises that the tenant does not occupy, is likely to be found unconscionable as defined in the Regulations. The regulations states that for the purposes of section 6 (3) (b) of the *Act [unenforceable term]*, a term of a tenancy agreement is "unconscionable" if the term is oppressive or grossly unfair to one party.

With this in mind I find that even if there had been a verbal agreement between the parties for the tenants to pay Hydro for areas of which they did not occupy this would be grossly unfair to the tenants and an unconscionable term of any agreement. Tenants are only required to pay utilities for premises that they occupy and there is insufficient evidence to show that they was either an agreement between the parties or that the tenants' rent had been reduced as compensation for paying the Hydro for the landlords' home and farm.

I am satisfied from the evidence before me that the tenants' calculations regarding the Hydro paid for the term of their tenancy was \$6,508.11. I am also satisfied from the evidence before me that this amount included premises which the tenants did not occupy namely the landlords' farm buildings and house. The tenants' calculations as to the amount they should have paid just for their rental unit is based on information provided from BC Hydro and in line with the bill the tenants paid for the last billing period of their tenancy when the Hydro had been separated. Based on this I will allow the tenants' claim to recover **\$4,000.00** for the overpayment of Hydro and a Monetary Order has been issued to the tenants pursuant to s. 67 of the *Act*.

As the tenants' claim has merit I find the tenants are also entitled to recover the filing fee of **\$50.00** pursuant to s. 72(1) of the *Act*.

Conclusion

I HEREBY FIND in favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$4,050.00**. The Order must be served on the landlords. Should the landlords fail to comply with the Order, the Order may be enforced through the Provincial (Small Claims) Court of British Columbia as an Order of that Court.

The landlords have withdrawn their application for an Order of Possession and therefore as the tenants have been successful with their claim I find the landlords must bear the cost of filing their own application.

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: January 07, 2016

---

Residential Tenancy Branch

