



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent or Utilities; a monetary Order for unpaid rent or utilities; a monetary Order for money owed or compensation for damage or loss; to retain all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution. The Landlord stated that she did not intend to apply for an Order of Possession, as the rental unit had been vacated when she filed her Application for Dispute Resolution.

The Landlord stated that on February 10, 2016 the Application for Dispute Resolution, the Notice of Hearing and 36 pages of evidence the Landlord submitted with the Application for Dispute Resolution were sent to the Tenant, via registered mail. The Tenant acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

On March 15, 2016 the Tenant submitted 2 pages and 2 photographs to the Residential Tenancy Branch. The Agent for the Tenant stated that this evidence was posted on the door of the Landlord's residence on March 15, 2015. The Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The parties present at the hearing were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

### Issue(s) to be Decided

Is the Landlord entitled to a monetary Order for unpaid rent or utilities and to keep all or part of the security deposit/pet damage deposit?

### Background and Evidence

The Landlord and the Tenant agree that:

- this tenancy began on January 12, 2013;
- the rent increased to \$712.35, effective December 01, 2015;
- rent was due by the first day of each month;
- the Tenant paid a security deposit of \$347.50 and a pet damage deposit of \$347.50;

- on January 26, 2016 the Tenant gave notice, via email, to end the tenancy on January 31, 2016; and
- the Tenant vacated the rental unit on January 31, 2016.

The Landlord is seeking compensation for lost revenue from February of 2016 as a result of being provided with late notice to end the tenancy. The Tenant stated that she was able to re-rent the rental unit for February 13, 2016, so she is seeking rent for the first twelve days of February, at a daily rate of \$24.56.

The Agent for the Tenant stated that the Tenant believed he could vacate the rental unit without a full month's notice because of an email sent by the Landlord on January 08, 2016, a copy of which was submitted in evidence. In this email the Landlord declares, in part, "If you are able to find a place you wouldn't have to give me the typical 1 month notice. Just let me know it the next couple days if this is what is what you want to do (say by the 11<sup>th</sup>)". (Reproduced as written)

The Landlord and the Tenant agreed that on January 10, 2016 the Tenant responded to the Landlord's email of January 08, 2016, in which he informed the Landlord "I don't have any plans to move at the present time".

The Agent for the Tenant stated that the Tenant eventually decided to move when he found mould in the closet of the rental unit and that he advised the Landlord of his intent to vacate shortly thereafter. The Landlord and the Tenant agree that the Tenant first informed the Landlord of the presence of mould in his email of January 26, 2016.

The Landlord is seeking compensation for unpaid hydro and water/sewer bills. The Landlord and the Tenant agree that the Tenant was required to pay 30% of the hydro bills and 30% of the water/sewer bills. The Agent for the Tenant stated that the Tenant is willing to pay all the hydro/water/sewer charges that he owes, but he did not want to pay those charges until he had been provided with copies of the applicable bills.

The Landlord submitted a hydro bill, in the amount of \$826.74, for the period between November 24, 2015 and January 21, 2016. The Tenant agrees he has not paid his portion of this bill.

The Landlord submitted a hydro bill, in the amount of \$742.96, for the period between January 22, 2016 and March 23, 2016. The Tenant agrees he has not paid his portion of this bill.

The Landlord submitted a water/sewer bill from 2014, which she used to estimate the amount owing for the period between October 16, 2015 and January 31, 2016. The Landlord stated that this bill was not submitted in evidence as she did not have it when she filed this Application for Dispute Resolution.

### Analysis

Section 45 of the *Residential Tenancy Act (Act)* stipulates that a tenant may end a periodic tenancy by providing the landlord with written notice to end the tenancy on a date that is not earlier than one month after the date the Landlord received the notice and is the day before the date that rent is due. To end this tenancy on January 31, 2016 in accordance with section 45 of the *Act*, the Tenant was required to give notice of his intent to vacate on, or before, December 31, 2015.

Section 53 of the Act stipulates that if a tenant gives notice to end a tenancy on a date that is earlier than the earliest date permitted by the legislation, the effective date is deemed to be the earliest date that complies with the legislation. In these circumstances, the earliest effective date of the notice that was given on January 26, 2016 was February 29, 2016.

On the basis of the undisputed evidence, I find that the Tenant did not comply with section 45 of the Act when he vacated the rental unit on January 31, 2016 after giving email notice, on January 26, 2016, of his intent to vacate.

I find that the Landlord could not rent this unit to a new tenant until the Tenant had physically abandoned the rental unit on January 31, 2016 or until the tenancy ended, by way of the Tenant's notice, on February 29, 2016. As the late notice significantly interfered with the Landlord's ability to re-rent the rental unit for February 01, 2016, I find that the Landlord is entitled to compensation for the loss of revenue she experienced for the first 12 days of February, at a per diem rate of \$24.56. I therefore grant the Landlord \$294.72 in lost revenue for February of 2016.

Even if I accepted that the Tenant had the right to end this tenancy without proper notice because the Landlord gave the Tenant permission to end the tenancy without one month's notice I would find, on the basis of the email of January 08, 2016, that the offer was contingent on the Tenant informing the Landlord of his intent by January 11, 2016. I do not find that this email granted the Tenant the right to end the tenancy at any time without proper notice. Rather, I find that the offer to end the tenancy without proper notice ended on January 11, 2016. As the Tenant did not act on this offer by January 11, 2016, I find that the Tenant no longer had the right to end the tenancy without proper notice.

In adjudicating the claim for lost revenue I considered section 45(3) of the Act which stipulates, in part, that if a landlord has failed to comply with a material term of the tenancy agreement and the landlord has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

Even if I had concluded that the presence of mould in the rental unit, which I have not, I would find that the Tenant has submitted insufficient evidence to establish that he had grounds to end this tenancy pursuant to section 45(3) of the Act. In reaching this conclusion I was heavily influenced by the undisputed evidence that the Tenant did not even inform the Landlord of the presence of mould until January 26, 2016. I find that the Tenant did not give the Landlord a reasonable opportunity to remediate the mould and that the Tenant did not, therefore, have the right to end the tenancy in accordance with section 45(3) of the Act.

On the basis of the undisputed evidence, I find that the Tenant was obligated to pay 30% of the hydro/water/sewer costs incurred during this tenancy.

On the basis of the undisputed evidence, I find that the Tenant has not paid his portion of the hydro bill for \$826.74. As the Tenant occupied the rental unit for this entire billing period, I find that he owes \$248.02 for this bill.

On the basis of the undisputed evidence, I find that the Tenant has not paid his portion of the hydro bill for \$742.96. As the Tenant occupied the rental unit for 10 days of this 61 day billing period, I find that he must pay his portion of 10/61 of this bill, which is \$121.80. The Tenant's portion of this bill is \$36.54.

As the Tenant has the right to see a hydro/water/sewer bill before paying his portion of it and the Tenant has not yet been provided with a copy of the water/sewer bill for the period between October 16, 2015 and January 31, 2016, I find that the Tenant is not yet obligated to pay those charges. I therefore dismiss the Landlord claim for compensation for water/sewer charges for the period between October 16, 2015 and January 31, 2016, with leave to reapply.

The Landlord retains the right to file another Application for Dispute Resolution for outstanding hydro costs if the Tenant does not pay the amount due after he is provided with a copy of applicable bills.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

### Conclusion

The Landlord has established a monetary claim, in the amount of \$679.28, which is comprised of \$294.72 in lost revenue, \$284.56 for unpaid utilities, and \$100.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to keep \$679.28 from the Tenant's security deposit and pet damage deposit, in full satisfaction of this monetary claim, leaving a balance of \$15.72. The Landlord must return the balance of the security/pet damage deposits.

Based on these determinations I grant the Tenant a monetary Order for the balance of \$15.72. In the event the Landlord does not comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia 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: March 23, 2016

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Residential Tenancy Branch