



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNR, MNDC, FF

### Introduction

This was a hearing with respect to the landlord's application for a monetary award. The hearing was conducted by conference call. The landlord and the named tenant called in and participated in the hearing.

### Issue(s) to be Decided

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

### Background and Evidence

The rental unit is the upper suite in a house on Vancouver Island. The landlord provided a tenancy agreement signed on June 8, 2014. The agreement specified that the tenancy was for a term commencing June 1, 2014 with rent in the amount of \$1,400.00 payable on the first of each month. The agreement recorded that the tenants paid a security deposit of \$700.00 on June 8, 2014.

The tenancy ended and the tenants moved out of the rental unit on November 15, 2014.

The landlord testified that the tenants failed to pay rent for June in the amount of \$1,400.00. He claimed for June rent and he said that there was an agreement to share utilities; the tenants were responsible for paying 70% of the oil and electrical utilities. The landlord claimed that the tenants were responsible for payment of the sum of \$323.41 as set out on two Hydro bills submitted as evidence.

The landlord testified that the tenants damaged the vinyl deck by attaching a tent to the deck. He claimed the sum of \$410.00 for the cost of a deck repair as set out on a quotation dated February 15, 2015. The landlord said that he has not performed the repair to the deck because he cannot afford to pay for the work.

The landlord said that he incurred a charge of \$25.00 as dump fees to remove garbage left by the tenants. He claimed the filing fee for his application as well as his cost for registered mail.

The Tenant disputed all of the landlord's claims save for an amount she agreed was due for utilities in the amount of \$306.79. The tenant testified that she responded to an internet advertisement and viewed the rental unit for the first time on June 8<sup>th</sup>. The tenant said that the rental unit was in need of significant work before it could be occupied. Flooring needed to be installed and the unit needed to be painted. She testified that the landlord agreed to provide the materials to do the flooring and paint work and allow the tenants to have access to the rental unit in June to perform the work. The tenancy agreement was signed on June 8<sup>th</sup>, the tenants had access to the unit in June, but they did not move into the rental unit until July 5<sup>th</sup>, after the work was completed. They paid the full rent for the month of July.

The tenant testified that payment of rent for June was never an issue and the landlord never raised the matter or requested payment of June rent until after the tenants successfully applied for the return of their security deposit, including double the amount of the deposit. After a hearing on July 27, 2015 the tenants were granted a monetary order in the amount of \$1,450.00, being double the security deposit plus the \$50.00 filing fee for the tenants' application. The landlord has not paid the amount due. The tenant said that first she first heard of the landlord's claim for June rent when she received his application for dispute resolution after it was filed on September 16, 2015. The tenant submitted that the claim was filed in retaliation after the tenants obtained a monetary order for the return of their deposit. She said there was no discussion of a rent payment for June at any time during the tenancy.

The tenant denied damaging the landlord's deck. She said that there was no condition inspection performed either when the tenants moved in or when they moved out.

The landlord testified that the tenants paid \$700.00 at the start of the tenancy and this payment was intended to be a partial payment of June rent. He said that the tenancy agreement incorrectly recorded that it was received as a security deposit, although the landlord was the party who drafted the tenancy agreement. The landlord disputed the tenant's evidence that any work needed to be done to the rental unit before the tenants could move in, but he did not deny that he supplied materials for work done to the rental unit.

### Analysis

The landlord's evidence that the tenants were responsible for payment of June rent was unconvincing. The landlord drafted the tenancy agreement and recorded the tenant's \$700.00 payment on signing as a security deposit. The evidence did not disclose any oral or written requests for payment of June rent at any time during the tenancy. The matter was not raised until the landlord filed his claim in September, 2015, after the tenants obtained an award of double the security deposit. I accept the tenant's evidence that work needed to be done to the rental unit before they could move in and the landlord allowed them access in June to perform the work with materials supplied by the landlord and they were not responsible for rent payments until they moved into the rental unit in July. I find that if the tenants were intended to be responsible for June rent, the landlord, if he was acting reasonably, would have made a demand for payment before the tenancy ended in November. I find that the tenants were not responsible for payment of rent for June and the landlord's claim for June rent is denied.

The landlord claimed for the cost of a deck repair. The burden of proving this claim rests with the landlord. There was no condition inspection when the tenancy began and no inspection was conducted when the tenants moved out. The landlord did not provide any photographs of the alleged damage and he has not performed the repair work. The tenant denied damaging the deck. She said there was some pre-existing damage to the deck, but nothing caused by the tenants during the tenancy. She denied leaving anything that needed to be taken to the dump. I find that the landlord has failed to prove on a balance of probabilities that the tenants are responsible for deck repairs or dump charges and these claims are denied. The tenant did say that she agreed to pay the sum of \$306.79 for the tenant's share of utilities. In his application the landlord claimed \$323.41 for utilities, but the amount he claimed is the full amount stated on the bills that he provided. The landlord said that the tenants were to be responsible for 70% of the utilities, not the full amount as he has claimed. I accept the tenant's statement that the tenants are responsible for utilities in the amount of \$306.79.

### Conclusion

The landlord's claim is allowed in the amount of \$306.79. All other claims are dismissed without leave to reapply. Because the landlord has succeeded only in recovering an amount agreed to be paid by the tenant, I decline to award the filing fee for his application. The landlord claimed for the cost of mailing, but costs associated with bringing an application, such as postage fees are not recoverable and this claim is denied as well.

I grant the landlord an order under section 67 in the amount of \$306.79. This order may be registered in the Small Claims Court and enforced as an order of that court. Instead of enforcing the order, the landlord may set off this amount against the outstanding monetary award in favour of the tenants.

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: April 04, 2016

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Residential Tenancy Branch