



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes MNR, MNSD, FF

### Introduction

This hearing convened as a result of a Landlords' Application for Dispute Resolution wherein the Landlords sought monetary compensation for unpaid rent, authority to retain the Tenants' security deposit and recovery of the filing fee.

The hearing was conducted by teleconference on October 24, 2017. Only the Landlords called into the hearing. The Landlord M.M. gave affirmed testimony and was provided the opportunity to present the Landlords' evidence orally and in written and documentary form, and to make submissions to me.

M.M. testified that she personally served the Tenants with the Notice of Hearing and the Application on May 19, 2017. I accept M.M.'s testimony and find the Tenants were duly served as of May 19, 2017 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the Landlords' submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Are the Landlords entitled to monetary compensation for unpaid rent?
2. Should the Landlords be entitled to retain the Tenants' security deposit?
3. Should the Landlords recover the filing fee?

### Background and Evidence

The Landlord testified that the tenancy began November 21, 2016; monthly rent was payable in the amount of \$850.00 and the Tenants paid a security deposit in the amount of \$425.00 and a pet damage deposit in the amount of \$425.00. The rental unit is a three story building with three bedrooms and two bathrooms.

The Landlord stated that the Tenants vacated the rental unit at the end of March 2017. She further testified that the Tenants gave verbal notice to end their tenancy during the second week of March 2017 such that they failed to give a full month's notice to end their tenancy.

The Landlord confirmed that after the Tenants gave notice, she and her husband decided to sell the rental property and decided not to rent the unit.

In the within action the Landlords sought loss of rent for the month of April 2017 in addition to the cost of utilities. The Landlords stated that the utilities were not included in the rent payment and as such the Tenants were required to pay the electrical utility as well as the water/sewer/garbage utility. She confirmed that at the end of the tenancy the sum of \$1,190.00 was owed for both of these utilities.

Introduced in evidence were copies of invoices for the electrical utility as well as the water/sewer/garbage. Also introduced in evidence was an email from the Landlord's accountant to the Tenants confirming the amount of utilities outstanding at the end of the tenancy.

Also introduced in evidence was an email from the Tenants dated March 4, 2017 wherein the Tenant K.V. acknowledges that they will pay the outstanding electrical utility. Also in this email the Tenant writes "Please keep our damage and pet deposit in place of April's rent."

### Analysis

After consideration of the testimony and evidence before me, and on a balance of probabilities I find the following.

The full text of the *Residential Tenancy Act*, Regulation, and Residential Tenancy Policy Guidelines, can be accessed via the website: [www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant).

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

I accept the Landlords' evidence that the Tenants gave verbal notice to end their tenancy in the second week of March 2017.

A Tenant may end a tenancy provided that the notice complies with sections 45 and 52 of the *Act*, which provide as follows:

### **Tenant's notice**

**45** (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,  
and

- (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.
- (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that
  - (a) is not earlier than one month after the date the landlord receives the notice,
  - (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
  - (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.
- (3) If a landlord has failed to comply with a material term of the tenancy agreement and 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.
- (4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

#### **Form and content of notice to end tenancy**

**52** In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

The Tenants failed to comply with the above when giving notice to end their tenancy as their notice was not in writing and did not give the appropriate 30 days. I therefore find the Tenants are responsible for the April 2017 rent and I award the Landlords compensation in the amount of **\$850.00** for this loss. Although the Landlords decided to discontinue renting the unit, this does not relieve the Tenants of responsibility for the April 2017 rent.

I also find that the Tenants authorize the Landlords to retain their deposits against the April 2017 rent such that they acknowledge responsibility for the payment of rent.

I also accept the Landlords' undisputed evidence that the Tenants failed to pay the utilities in the amount of **\$1,190.00**. I therefore award the Landlords compensation in this amount.

Having been successful, the Landlords are also entitled to recover the **\$100.00** filing fee for a total of **\$2,140.00**.

Conclusion

I award the Landlords the sum of **\$2,140.00** representing unpaid rent and utilities as well as recovery of the filing fee. I authorize the Landlords to retain the Tenants **\$425.00** security deposit and **\$425.00** pet damage deposit as partial payment of the amounts awarded and I grant the Landlords a Monetary Order in the amount of **\$1,290.00** for the balance due. This Monetary Order must be served on the Tenants and may be filed and enforced in the B.C. Provincial Court 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: November 23, 2017

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Residential Tenancy Branch