



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      MNDC, FF

### Introduction

This hearing dealt with a tenant's application for a Monetary Order for damages or loss under the Act, regulations or tenancy agreement. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

### Preliminary and Procedural Matters

In filing her Application for Dispute Resolution, the tenant provided a detailed description of the amounts she was seeking to recover from the landlord, totalling \$6,381.62, in the "Details of Dispute" section of the application. The tenant subsequently submitted a Monetary Order Worksheet that had the same sum of \$6,381.62 but the individual claims were somewhat different than those appearing in the details of dispute. The tenant explained that she had misplaced some documents and she created the Monetary Order worksheet to the best of her recollection but that the amounts appearing in the details of dispute were more accurate. The landlord stated that she was prepared to respond to the amounts appearing on the Monetary Order worksheet. With agreement of both parties, the amounts appearing on the Monetary Order worksheet were reviewed during the hearing.

The tenant had delivered an evidence package to the landlord on December 27, 2017 which is technically late. The tenant explained that she was waiting upon a police report to arrive but when she could wait no longer she proceeded to serve the landlord with the documents she did have. The landlord provided an evidence package in response to the tenant's evidence on December 30, 2017. Since the landlord had prepared a response to the tenant's evidence I was satisfied that the landlord was not unduly prejudiced by the tenant's late submission. Accordingly, I considered the evidence packages provided by both parties, so long as it is relevant to the matter before me.

I noted that included in the landlord's evidence package was a Monetary Order worksheet indicating the landlord intends to make a claim against the tenant but the landlord quoted the tenant's file number. Evidence provided by the landlord also appeared to be relevant to a

landlord's claim against a tenant. The landlord confirmed that she had not filed an Application for Dispute Resolution against the tenant and she stated she thought the venue for doing so was during this hearing. I explained to the parties that I could not consider awarding the landlord compensation without a claim first being made by way of an Application for Dispute Resolution. The landlord still has the right to make a claim against the tenant but the purpose of this proceeding is to deal with the claims filed made by the tenant.

#### Issue(s) to be Decided

Has the tenant established an entitlement to recover the amounts claimed against the landlord?

#### Background and Evidence

Pursuant to an oral agreement, the tenancy started on July 1, 2015 on a month to month basis. The tenants were required to pay rent of \$900.00 on the first day of every month. The residential property is a large acreage and the rental unit is a mobile home. A second mobile home is also on the property but it is vacant.

The tenancy was set to end on August 31, 2017 pursuant to a *2 Month Notice to End Tenancy for Landlord's Use of Property*; however, the tenants did not vacate the rental unit until October 3, 2017.

Below, I have summarized the tenant's claims against the landlord and the landlord's responses.

#### **Theft of hydro -- \$2,886.00**

The tenants were responsible for providing their own hydro for the rental unit. The tenant secured a hydro account through her mother-in-law to avoid paying a deposit to BC Hydro.

According to the tenant, the hydro bills were very high. The tenant submitted that in January 2017 she and her family left town for two weeks and turned the breakers off in the mobile home. When the hydro bill arrived for the period of December 2016 and January 2017 the bill was still very high. The tenant contacted BC Hydro and it was suggested that the large bill was due to the cold weather. The tenant persisted with her complaints that the hydro bill was too high and in May 2017 BC Hydro sent a technician to the property to conduct tests. The tenant described how a "breaker test" was done, which is to switch all breakers off and monitor the meter to see if hydro is still being consumed. The breaker test performed in May 2017 showed that electricity was being consumed even though the breakers were off in the mobile home. The tenant stated that it was determined that the other mobile home on the property must be using electricity supplied through the tenant's hydro account. The tenant stated that there was no breaker in the rental unit that was identified as being for the other mobile home and that it was not possible to disconnect the other mobile home without disconnecting electricity to the rental unit.

Based on the tenant's statement that the breakers were turned off for two weeks in January 2017 BC Hydro determined that the other mobile home must be using approximately \$111.00 in electricity every month. The tenant submitted that she should be compensated for the electricity used by the two exterior lights on the vacant mobile home that ran for approximately 12 hours per day; a large yard light; and, two security cameras installed by the landlord. The tenants seeks compensation equivalent to \$111.00 multiplied by 26 months, the length of the tenancy, which is \$2,886.00.

It was undisputed that the tenant brought this issue to the landlord's attention shortly after the BC Hydro technician was at the property. The landlord attended the property in June 2017 and installed a solar panel on the roof of the vacant mobile home and turned off the yard light.

The tenant made a complaint to the police concerning theft of hydro but it was suggested to her that she take the matter to the Residential Tenancy Branch. The tenant also contacted the regional authority and learned that there was no permit in place for the second mobile home on the property and the regional authority suggested the tenant contact the BC Safety Authority about the lack of electrical permits.

The landlord acknowledged that electricity for the vacant mobile home was provided by an extension cord that runs underground from the rental unit to the vacant mobile home. The landlord stated that there was a breaker in the rental unit that would disconnect the power supply to the vacant mobile home but she was uncertain as to whether it was labeled as such in the electrical panel. The landlord acknowledged that two 1 watt light bulbs were on the exterior of the vacant mobile home and one 1 watt light bulb was on the inside. The landlord stated the tenant's spouse had asked for the yard light to be left on and the security cameras were run on batteries. The landlord offered to compensate the tenant \$30.00 per month up until the month of June 2017 for powering the exterior and interior light bulbs at the vacant mobile home.

The landlord was of the position that the tenant's claim for \$111.00 per month is unreasonable. The landlord stated that she resided in the rental unit for approximately 26 years and that the hydro bills for the rental unit are high due to the nature of the building. The landlord doubted that the tenant actually had all of the breakers off when they went out of town since they had a fridge and freezers at the property and heat tape under the rental unit needs to run to keep the pipes from freezing. The landlord also stated that the tenants had flood lights running all the time in the shed and suggested that the tenants had marijuana grow operation at the property.

The tenant claims that further breaker tests were performed in June 2017, July 2017 and August 2017 and those tests showed that electricity was still being consumed outside of the rental unit.

**Damages and stress -- \$2,700.00**

The tenant submitted that she suffered stress as a result of various events during the tenancy, including:

- Very high hydro bills which the tenants struggled to pay and a portion of the hydro bill was attributable to electricity used on other parts of the property. In February 2017 the tenant suffered a miscarriage which may have been attributable to stress.
- The tenant had to do a lot of cleaning up of the property at the start of the tenancy, including cleaning out the shed that the tenants were supposed to have use of.
- In June 2017 the landlord's father-in-law came to the property without reason or notice to the tenants and was caught looking through the tenant's spouse's tools in the shed.
- On September 1, 2017 the landlord's son and two other men came to the property, with bats, trying to entice the tenant's spouse to come and fight them. The tenant called the police after the men left.

The landlord submitted that the hydro for the rental unit was high but that the monthly rent was set low. The hydro attributable to the other mobile home would have cost approximately \$30.00 per month. The landlord stated that the landlord was to clean out the shed before the tenants could use it and the tenants took it upon themselves to clean out the landlord's possessions. The landlord's father-in-law owns the property and the tenants did not rent the entire 40 acre parcel of land, meaning the owner had the right to attend the other portions of the property. The father-in-law did not go in the shed but the tenants left the door to the shed open and he looked in as he walked by. The landlord did not ask her son to go to the property on September 1, 2017 on her behalf. Rather, her son anticipated moving in to the rental unit on September 1, 2017 based on the 2 Month Notice to End Tenancy and took it upon himself to go to the property. The landlord's son did not have bats with him, but took a flashlight. The other men were there as there was talk of a marijuana grow operation at the property.

### **Other damages and loss claimed**

The tenant had claimed recovery of several other items which I dismissed summarily during the hearing without hearing a response from the landlord. Those other claims and the reasons for dismissing them are provided in the analysis section of this decision.

### **Analysis**

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;

3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Upon consideration of everything before me, I provide the following findings and reasons.

## Hydro

The tenant was responsible for acquiring her own hydro account for the rental unit, which she did through her mother-in-law. It was undisputed that the tenant's hydro account was supplying hydro to other parts of the property, including a second mobile home. I was also provided consistent evidence that this was determined only after the tenant began questioning the high hydro bills and requested an inspection by BC Hydro rather than disclosure by the landlord.

Residential Tenancy Branch Policy Guideline 1 provides information with respect to shared utility services. It states:

### **SHARED UTILITY SERVICE**

1. 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.
2. If the tenancy agreement requires one of the tenants to have utilities (such as electricity, gas, water etc.) in his or her name, and if the other tenants under a different tenancy agreement do not pay their share, the tenant whose name is on the bill, or his or her agent, may claim against the landlord for the other tenants' share of the unpaid utility bills.

In this case, the landlord acknowledged that the other mobile home had been using electricity provided through the tenant's hydro account and the landlord was agreeable to compensating the tenant; however, the amount of compensation payable to the tenant is the crux of this dispute. The landlord submitted that \$30.00 per month is reasonable; whereas, the tenant submitted that the consumption at the second mobile home was estimated to be \$111.00 per month.

The landlord based her estimate loosely on the electricity she consumes at her current residence, which she described as being \$89.00 per month. The tenant pointed to BC Hydro calculating the electricity consumed by the second mobile home as being \$111.00 per month; however, upon review of BC Hydro's statement I find the evidence is not that clear. BC Hydro's estimate was based on the tenant's assertion that she turned the breakers off to the rental unit for two weeks in January 2017 and the BC Hydro technician states the hydro consumed during those two weeks is "**presumably** by the second building at the address" [my emphasis on the word "presumably"]. I note that there is very little evidence to corroborate that the tenant turned off all the breakers in the rental unit for two weeks and the landlord questioned this assertion.

In hearing from both parties, I find I have reservations concerning the positions put forth to me by both parties put forth to me, which I will illustrate below.

The tenant had testified that she turned the breakers off to the rental unit for two weeks in January 2017. As pointed out by the landlord, turning off the breakers to everything in the rental unit would mean the fridge and freezers would be off, as well as the heat tape, which should be running in the winter months. I also find it doubtful that the tenant would disconnect the fridge, freezer and heat tape as there would be consequences of doing so such as spoiled food and/or frozen pipes. When I look at the original email the tenant wrote to the landlord about this issue on May 31, 2017 the tenant wrote: "In January of this year we were house sitting for my mom from January 15 – 31<sup>st</sup> and ensured everything was turned off." The tenant does not state she turned the breakers off. I find it more likely the tenant turned the heat off or down and lights and electronics were turned off.

As for the landlord's statements that the other mobile home was powered by an undergrown extension cord connected to the rental unit and that a breaker in the rental unit would have disconnected the power to the vacant mobile home, I find this position to be inconsistent with the test performed by BC Hydro. If the landlord's statement were accurate then the breaker test performed by BC Hydro would have stopped consumption of all electricity; but, electricity continued to be consumed when all breakers in the rental unit were turned off. Clearly, there is a draw of electricity that is not running through the breaker panel in the rental unit. This would appear to support the tenant's assertion that electrical modifications have been made at the property without permits and non-compliant with applicable building laws.

The landlord suggested the tenants had tampered with the electrical system to support a marijuana grow operation; however, I find it doubtful that the tenant would call BC Hydro to do an electrical inspection if there was marijuana grow operation at the property.

Taking all of the above into consideration, I find it reasonably likely that the tenant's request for compensation of \$111.00 per month is too high the landlord's estimate does not take into account all of the electricity that may have been diverted by improper electrical connections. I note that in the tenant's email communications with the landlord when the tenant was seeking to resolve this dispute amicably, the tenant requested compensation of \$70.00 per month from the landlord [email dated June 28, 2017]. I find this amount to be the most reasonable in the case before me. Therefore, I award the tenant compensation of \$70.00 per month for 26 months, or \$1,820.00.

Although this claim involves compensation for 26 months, which usually points to a question of mitigation, in this case I am satisfied the tenant took action to rectify the situation very shortly after determining electricity was being diverted to other places on the property. The tenant determined this on May 31, 2017 and approached the landlord about it that same day. Subsequent communications in June 2017 show the parties were trying to resolve the dispute

between themselves and when that was unsuccessful the tenant made an Application for Dispute Resolution the following month.

### **Damages and stress**

While having financial strains and disputes is stressful, stress caused by contract disputes or financial disputes do not rise to the level of emotional distress that warrants compensation.

As for cleaning up the property at the start of the tenancy, I am of the view that if the situation was so dire as to warrant compensation that the tenant would have raised the issue with the landlord at that time and I make no award for compensation for a claim made years later.

As for the landlord's father-in-law coming to the property without reason or notice, I accept the landlord's submission that the tenants did not rent the entire 40 acre parcel and that the father-in-law had a right to come to the portions of the property that was not set aside for the tenant's exclusive use. As I informed the landlord during the hearing, when a property is large and the tenant is entitled to exclusive use of only a portion of the property, it is important to set out the boundaries of the property that are for the tenant's exclusive use to avoid disputes. The landlord did not prepare a written tenancy agreement setting out the boundaries of the property for the tenant's exclusive use. Nevertheless, I heard consistent testimony that the tenant was entitled to use of the shed and the landlord's father-in-law was on the property by the shed, whether he went in the shed or looked into it. Under section 28 of the Act, a tenant is entitled to reasonable privacy and I find the landlord's father-in-law's breached the tenant's privacy. Under section 1 of the Act, an owner of a property is included in the definition of landlord. Accordingly, the owner's actions that breach the Act may result in compensation for the tenant. The tenant did not set out a specific amount of compensating for this breach, so I award the tenant a nominal award of \$1.00 in recognition of the breach.

As for the events that took place on September 1, 2017, I find there is insufficient evidence for me to accept that the landlord requested her son go the rental unit and try to fight with the tenant's spouse. Rather, I find it likely the landlord's son went to the property on his own volition and the tenant's remedy was to call the police.

In light of all of the above, I award the tenant a nominal award of \$1.00 for breach of privacy by the owner of the property and I dismiss the remainder of the tenant's claim for compensation for "damages and stress".

### **Other claims**

Below, I describe the other items claimed by the tenant and the reasons these claims were dismissed summarily during the hearing.

Lost wages -- \$155.04

The tenant could not recall the date she took a day off work and did not supply documentary evidence in support of the loss. Accordingly, I found the tenant failed to provide verification for the loss and I dismissed this claim summarily without hearing a response from the landlord.

Damaged barbeque -- \$300.00

The tenant did not provide photographs of the damaged barbeque or documentary evidence to support its value such as a receipt or internet print out of the same or similar barbeque. Therefore, I found there to be insufficient evidence of damaged property and its value.

E-transfer fees -- \$37.50

The tenant requested recovery of e-transfer fees incurred to send rent payments to the landlord. Costs for a tenant to pay rent are not recoverable under the Act. Therefore, I dismissed his claim summarily.

Postage fees - \$14.12

The tenant claimed recovery of postage costs for mailing documents to the landlord for this dispute resolution proceeding. The Act does not provide for recovery of costs incurred to prepare for or participate in a dispute resolution proceeding, except for the filing fee. Therefore, I dismissed this claim summarily.

Moving costs -- \$188.96

The tenant claimed costs to move from the rental unit. The tenancy ended pursuant to a 2 *Month Notice to End Tenancy for Landlord's Use of Property* that the tenant did not dispute. The tenant and landlord confirmed that the tenant received the compensation a tenant is entitled to receive for receiving a 2 Month Notice by withholding rent payable for August 2017. The compensation payable to tenants in receipt of a 2 Month Notice is intended, at least in part, to offset moving costs. Therefore, I found there to be no basis for this claim and I dismissed it summarily.

### **Filing fee and Monetary Order**

The tenant's claim had merit and I award the tenant recovery of the \$100.00 filing fee paid for this application.

In keeping with all of the above findings and awards, I provide the tenant with a Monetary Order to serve and enforce upon the landlord, calculated as follows:



Hydro	\$1,820.00
Breach of privacy (nominal)	1.00
Filing fee	<u>100.00</u>
Monetary Order	\$1,921.00

Conclusion

The tenant has been provided a Monetary Order in the amount of \$1,921.00 to serve and enforce upon the landlord.

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 17, 2018

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Residential Tenancy Branch