



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDCT, DRI

### Introduction

This is an application under the Residential Tenancy Act (the *Act*) by the tenant for a Monetary Order for the following:

- return of a security deposit;
- reimbursement of amounts paid more than the allowable amount for rent increases; and
- reimbursement of electricity and water expenses.

The tenant appeared along with his representative KM. Both landlords appeared with their counsel, JN. All parties were given an opportunity to present affirmed testimony and submit documents, to cross-examine the other party, and to make submissions.

The tenant filed a Notice of Hearing and supporting documents on December 12, 2017 which was served upon the landlords by registered mail on that day. Each party acknowledged receipt of the other's documents.

### Issues to be Decided

The issues are whether the tenant is entitled to the following:

1. return of the security deposit pursuant to section 38(1)(c) of the *Act*;
2. a Monetary Order for reimbursement of:
  - a. a rent increase pursuant to Section 43(5) of the *Act*; and
  - b. water and electricity expenses pursuant to section 67 of the *Act*.

### Background and Evidence

Both parties introduced into evidence copies of the following documents:

- a fixed term tenancy agreement with Addendum signed October 14, 2015 (“the 2015 Agreement”) for the rental of a log house for one year beginning November 1, 2016. Rent was \$600.00 monthly payable on the first of the month (The tenant provided a \$600.00 security and pet deposit (together, the ‘deposits’).
- a fixed term tenancy agreement dated November 1, 2016 signed by the landlords but not signed by the tenant.
- a Notice of Rent Increase signed by the landlord KK dated August 31, 2016 increasing the rent from \$600.00 to \$725.00 starting on November 1, 2016.

The Addendum to the 2015 Agreement states, among other clauses, as follows:

- *“6. Tenant is responsible for the electrical bills for the house. BC Hydro bills will be sent to tenant via email every second month. Payment will be made to either [landlord].”*
- *“9. Tenant is responsible for keeping the water and sewer system for the house in working order.”*

The tenant paid the increased monthly rent of \$750.00 starting November 1, 2016 until the end of September 2017 when he moved out (eleven months).

### Water

The tenant had no water in the premises for seven months in the winter of 2015-16 and again in 2016-17. The tenant was without running water for a total of 14 months of the 23-month tenancy.

The water source for the water to the house is approximately an hour walk on a mountainside from where the water flows through a pipe to a cistern near the house. It then flows into the house in a gravity-fed system. The water stopped flowing because of build-up of debris and leaves at the source, clogging the filter, and slowing/stopping the flow as it freezes.

The landlords testified they told the tenant at the beginning of the tenancy how to maintain the water source. That is, the tenant had to annually walk to the water source and clear debris from the filter. This would assure the water would flow freely all winter. They submitted a letter from a previous tenant stating he had not had ‘serious water problems’.

The tenant testified he was not informed of the existence of this water source. The landlords agree they did not take him to the water source. The tenant assumed the water was supplied from a nearby well and stored in the cistern located near the house.

The tenant said he conducted enquiries to determine the solution when the water first stopped in the fall of 2015. He hired a plumber who told him a likely source of the problem was a partially crushed water pipe crossing a field which slowed the water allowing it to freeze.

The tenant testified he informed the landlords of the situation during the first winter and they took no steps to remedy the situation or advise him what to do. The landlords said they saw the lack of water as his responsibility, not theirs.

Every second day for each seven-month period, the tenant drove to a local community centre 16 kilometres away. There, he filled 5-gallon containers with water, loaded the containers onto his truck, and returned to the house. The tenant therefore estimates he drove more than 400 km a month to get water.

The tenant testified he remained in the house after the expiry of the 2015 Agreement despite the lack of a solution to the water problem because he had no where else to go. He said he was a senior, dyslexic, and illiterate.

In September 2017, the landlords diverted all water from the premises for their horses. This completely cut the water off for the house. The parties disagree on how long the water was cut off. The landlords stated it was only for two hours; the tenant states the diversion was for two days. In any event, the tenant decided he could no longer remain in the premises without water and he vacated the house at the end of September 2017.

The tenant claims a Monetary Order for compensation for his travel expenses to obtain water of \$100.00 a month (approximately \$.40 km) for fourteen months, being a total of \$1,400.00.

### Electricity

The tenant requested compensation for the landlords' electricity consumption during the tenancy. While both parties agree the landlords used electricity which was paid for by the tenant, they disagree on appropriate compensation.

The parties agreed the landlords had an operating workshop near the premises which was connected to the single meter. There were various equipment and motor vehicles belonging to the landlords at the workshop. The landlords also had a fifth wheel trailer (motor home) parked there which they occupied for two months each summer. The landlords also agree that their family stayed in the motor home from time to time.

The tenant states that he raised the issue of the landlords' electricity use in June of 2017 and the landlords agreed to pay him \$150.00 (3 summer months x \$50.00 a month) of which he received \$50.00.

The landlords deny any such agreement. As a gesture of good will, they state they adequately compensated the tenant for their minimal use of electricity by giving him \$100.00.

The tenant suggests the landlord's use of electricity has a value of \$959.85 and he requests a Monetary Order in this amount. In support of his claim, the tenant submitted each BC Hydro invoice for the duration of the tenancy. The tenant applied his present-day electricity consumption to the consumption during the tenancy. He then attributed all use over that amount to the landlords.

The tenant acknowledges the imprecision of the estimate. He also admits another person lived with him for the first year and he did not take this into account in his calculation.

#### Security Deposit, Condition Inspection Report and Forwarding Address

When he left, the tenant testified he cleaned the house and called the landlord KK to inspect it and sign the report. The landlord KK replied he was too busy.

The landlords deny this exchange took place. They did not give evidence of attempting to schedule an inspection.

The tenant testified he provided his forwarding address to the landlords in a letter dated November 16, 2017 sent by registered mail. The tenant provided a copy of the Canada Post tracking number.

The tenant affirmed at no time did he authorize the landlords to retain any portion of the security deposit. The landlords admit they did not apply within 15 days of the termination of the tenancy to retain the security deposit.

In support of their decision to keep the security deposit, the landlords claim the tenant took some of their furniture when he left, damaged a wall, and failed to replace firewood, all of which is denied by the tenant.

The landlords provided no evidence they have filed an Application for Dispute Resolution seeking to retain any portion of the security deposit.

### Analysis

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.

### Security Deposit

I find the tenancy ended on September 30, 2017. I also find the tenant provided the landlord with his forwarding address by registered mail sent November 16, 2017. Further to Section 90 of the *Act*, receipt of registered mail is deemed on the 5<sup>th</sup> day after service. Accordingly, I find the landlord received notice of the forwarding address on November 21, 2017.

Section 38 of the *Act* requires the landlords to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. I find the landlord did not return the deposits 15 days after receiving the tenant's forwarding address in writing, that is, by December 6, 2017.

If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenants' written permission to keep all or a portion of the security deposit pursuant to section 38(4)(a).

I find that at no time have the landlords brought any proceedings with respect to nonpayment of rent nor have they brought an application for dispute resolution claiming against the security deposit for any outstanding rent or damage to the rental unit pursuant to section 38(1)(d) of the *Act*.

I accept the tenant's evidence he has not waived his right to obtain a payment pursuant to section 38 of the *Act* and the landlord was given written notice of a forwarding address.

In addition, the tenant testified and the landlord agreed that no condition inspection report was prepared at the start or end of the tenancy as required under sections 23 and 35 of the *Act*. Section 24 of the *Act* outlines the consequences if reporting requirements are not met. The section reads in part:

24 (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

...

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Accordingly, I also find that the landlord has extinguished any right to claim against the security deposit for damage to the rental unit by failing to prepare a condition inspection report at the start and at the end of the tenancy.

Under these circumstances and in accordance with sections 38(6) and 72 of the *Act*, I find that the tenants are entitled to a Monetary Order of \$1,200.00 calculated as follows:

Security deposit	\$600.00
Doubling of security deposit under section 38(6)	\$600.00
<b>Amount owing tenants by landlord – Security Deposit</b>	<b>\$1,200.00</b>

No interest is payable over this period.

### Rental Increase

A landlord and tenant may agree to renew a fixed term tenancy agreement with or without changes, for another fixed term. In this case, the proposed agreement for a second term was not signed and the 2015 Agreement does not indicate if the tenant is to vacate the premises at the end of the term. Section 44(3) states that if a tenancy does not end at the end of the fixed term, and if the parties do not enter into a new tenancy agreement, the tenancy automatically continues as a month-to-month tenancy on the same terms.

Therefore, the tenancy agreement in this case ceased being a fixed term agreement and became a month-to-month tenancy on October 31, 2016 at the end of the term of the 2015 Agreement.

A rent increase in a month-to-month tenancy is subject to the rent increase provisions of the *Act*, including requirements for timing and notice. The landlords were at liberty to increase the rent for this tenancy on any date providing the proper notice was given at least 3 months before the effective date of the increase.

Section 43 of the *Act* stipulates that the amount of a rent increase must comply with the regulations unless a landlord has received approval through applying for an additional rent increase in accordance with the regulations. Each year the RTB publishes the annual allowable rent increase rate as calculated pursuant to the regulations. In 2016, the allowable increase was 2.9%. The rent increase in the Notice was 21%.

Three months notice was not provided as the Notice of Rent Increase is dated August 31, 2016 and effective two months later on November 1, 2016. The tenant further stated he did not know about the rent increase until it was due to take place.

I find the Notice is invalid because it increases the rent beyond the allowable rate for 2017 and was not served as required by the *Act*. The landlord has not filed an Application seeking an additional rent increase.

I therefore allow the tenant a Monetary Order for compensation for an invalid rent increase as follows:

11 months (November 1, 2016 to September 30, 2017)	\$125.00 x 11	\$1, 375.00
<b>Monetary Order for Invalid Rent Increase</b>		<b>\$1,375.00</b>

#### Water expenses

*Policy Guideline 1* of the *Act* states as follows:

The Landlord is responsible for ensuring that rental units and property, or manufactured home sites and parks, meet “health, safety and housing standards” established by law, and are reasonably suitable for occupation given the nature and location of the property.

Section 32(1) of the *Act* states that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and

housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

According to Section 7 of the *B.C. Health Hazard Regulations*, a landlord must not rent a rental unit unless it is connected to a community (permitted) water supply system or the landlord can provide the tenant with a supply of potable water for domestic (drinking, cooking and sanitation) purposes.

Therefore, and in consideration of the landlord's obligations under Section 32 of the *Act*, I find the landlords were responsible to assure the tenant an adequate supply of potable water. They have failed to do this. As soon as the landlords learned the tenant had no water, the landlords had a duty to remedy the situation. The landlords failed to inform the tenant of how to maintain the water source and failed to remedy the situation when the water froze.

Section 27 of the *Act* stipulates that a landlord must not terminate or restrict a service or facility if that service or facility is essential to the tenant's use of the rental unit as living accommodation or providing the service or facility is a material term of the tenancy agreement.

I find the provision of potable water to be a material term of the tenancy which was essential to the tenant's use of the unit.

It is not disputed that the tenant drove to the local community centre every second day for a total of fourteen months to obtain water. The landlords did not dispute that the tenant incurred the expenses he claimed or that the expenses were unreasonable in the circumstances.

I therefore grant the tenant a Monetary Order for compensation for his travel expenses to obtain water in the amount claimed of \$1,400.00

### Electricity

The tenant must establish on a balance of probabilities he has incurred the expenses claimed.

In this case, I find there is insufficient evidence of the monthly increase in electricity cost attributable to the landlords throughout the tenancy.



However, both parties admit there was an agreement for payment of the landlord's use. I find on a balance of probabilities, and considering all the circumstances of this case, the parties likely entered into an agreement for compensation for electrical use of at least \$150.00 (3 months of the summer season x \$50.00 a month). I prefer the tenant's evidence as the more likely recollection that he received \$50.00 and expected to receive at least two more payments.

I therefore grant a Monetary Order to the tenant for reimbursement of the cost of electricity consumed by the landlords in the amount of \$100.00.

In summary, I find the tenant is entitled to a Monetary Order as follows:

Security Deposit	\$1,200.00
Rent Increase	\$1,375.00
Water Expenses	\$1,400.00
Electricity Reimbursement	\$100.00
<b>Monetary Order Total</b>	<b>\$4,075.00</b>

### Conclusion

**I ORDER** that the tenant is entitled to a Monetary Order in the sum of **\$4,075.00**. **I ORDER** that the landlords pay this sum forthwith. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: June 05, 2018

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Residential Tenancy Branch