



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

MNRL, FFL

### Introduction

A hearing was convened on July 22, 2019 in response to the Landlords' Application for Dispute Resolution, in which the Landlords applied for a monetary Order for unpaid rent or utilities and to recover the fee for filing this Application for Dispute Resolution.

The hearing on July 22, 2019 was adjourned for reasons outlined in my interim decision of July 23, 2019. The hearing was reconvened on September 20, 2019 and was concluded on that date.

On July 22, 2019 the Landlord stated that the Dispute Resolution Package was personally served to the Tenant with the initials "J.B." on April 23, 2019. He stated that this Tenant threw those documents away. He stated that Dispute Resolution Package was again personally served to the Tenant with the initials "J.B." by a process served on April 25, 2019. The Landlord submitted documentary evidence that corroborates this testimony. In the absence of evidence to the contrary I find that these documents have been served to the Tenant with the initials "J.B." in accordance with section 89 of the *Residential Tenancy Act (Act)*; however this Tenant did not appear at the hearing. As the documents have been properly served to this Tenant, the matter proceeded in his absence.

On July 22, 2019 the Landlord stated that the Dispute Resolution Package was personally served to the Tenant with the initials "J.T." by a process served on April 26, 2019. The landlord submitted documentary evidence that corroborates this testimony. In the absence of evidence to the contrary I find that these documents have been served to the Tenant with the initials "J.T." in accordance with section 89 of the *Act*;

however this Tenant did not appear at the hearing. As the documents have been properly served to this Tenant, the matter proceeded in her absence.

On July 22, 2019 the Landlord stated that an Amendment to an Application for Dispute Resolution was served to the Tenants with the package that was served to them on April 26, 2019. In this amendment the landlord amended the address of the rental unit and that address is reflected on the first page of this decision.

On September 10, 2019 the Landlord submitted evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was identical to the evidence that was served to the Tenant with the Application for Dispute Resolution. In the absence of evidence to the contrary I find that these documents have been served in accordance with section 88 of the *Act* and they were accepted as evidence for these proceedings.

The Landlord was given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The Landlord affirmed that he would provide the truth, the whole truth, and nothing but the truth at these proceedings.

#### Issue(s) to be Decided

Are the Landlords entitled to a monetary Order for unpaid rent or lost revenue or unpaid utilities?

#### Background and Evidence

The Landlord stated that:

- this tenancy began on December 01, 2017;
- the tenancy was for a fixed term, the fixed term of which ended on November 30, 2018;
- the Tenants agreed to pay rent of \$2,500.00 by the first day of each month;
- the Landlord agreed to reduce the rent to \$2,000.00 for the period between December 01, 2017 and April 30, 2018;
- the Tenants only paid \$1,200.00 per month in rent for the period between December 01, 2017 and April 30, 2018;
- the Tenants still owe \$4,000.00 in rent for the period between December 01, 2017 and April 30, 2018;
- the Tenants only paid \$700.00 in rent for May of 2018;
- the Tenants still owed \$1,800.00 in rent for May of 2018;
- the Tenants vacated the rental unit on May 15, 2018;
- the Tenants did not give notice of their intent to vacate the rental unit;

- on May 21, 2018 the caretaker determined that the rental unit had been abandoned;
- he was out of the country between December 06, 2017 and September of 2018;
- on, or about, September 15, 2018 he advertised the rental unit on a popular website and in a brochure that he distributed at local locations;
- he initially advertised the rental unit for \$2,500.00 but reduced the rent to \$2,000.00 in February of 2019; and
- he re-rented the unit in March of 2019.

The Landlord is seeking compensation for unpaid rent for the period December 01, 2017 and May 31, 2018. The Landlord is seeking compensation for lost revenue for the period between June 01, 2018 and November 30, 2018.

The Landlord is seeking compensation of \$413.26 for water/sewer charges incurred during the tenancy; \$549.61 for hydro costs; and \$1,094.97 for gas costs. The Landlord stated that the Tenants were required to pay for water, sewer, hydro, and gas charges that were incurred during the tenancy.

The Landlord submitted a copy of the tenancy agreement. The agreement stipulates, on page two, that water and sewer is included with the tenancy. Item two of the addendum to the tenancy agreement stipulates that the Tenants must pay "full utilities" as of March of 2018.

The Landlord submitted several hydro and gas bills for this rental unit. The Landlord stated that the Tenants have not reimbursed the Landlord for any of these costs.

### Analysis

On the basis of the undisputed evidence I find that the Tenants entered into a fixed tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$2,000.00 for the period between December 01, 2017 and April 30, 2018 and \$2,500.00 in rent for the remainder of the fixed term.

On the basis of the undisputed evidence I find that the Tenants only paid \$1,200.00 per month in rent for the period between December 01, 2017 and April 30, 2018 and that they still owe \$4,000.00 in rent for that period. On the basis of the undisputed evidence I find that the Tenants only paid \$700.00 in rent for May of 2018 and that they still owe \$5,800.00 in rent for that period.

As the Tenants are required to pay rent when it is due, pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$5,800.00 in outstanding rent for the period between December 01, 2017 and May 31, 2018.

On the basis of the undisputed evidence I find that this tenancy ended, pursuant to section 44(1)(d) of the *Act*, when the Tenants abandoned the rental unit on May 15, 2018.

I find that the Tenants did not comply with section 45(2) of the *Act* when they ended this fixed term tenancy on a date that was earlier than the end date specified in the tenancy agreement. I therefore find that the Tenants may be liable for losses the Landlord experienced as a result of the Tenants' non-compliance with the *Act*, pursuant to section 67 of the *Act*.

Section 7(2) of the *Act* stipulates, in part, that a landlord who claims compensation for damage or loss that results from a tenant's non-compliance with the *Act*, the regulations, or their tenancy agreement, must do whatever is reasonable to minimize the damage or loss. I find that the Landlord did not take reasonable steps to minimize the lost revenue he experienced in June, July, August, and September of 2018. I find that the Landlord's failure to advertise the rental unit in a timely manner significantly interfered with his ability to find new tenants for those months. As the Landlord did not advertise the rental unit in a timely manner, I dismiss his claim for compensation for lost revenue for those months.

In adjudicating this claim I recognize that the Landlord's ability to advertise in a timely manner was impacted by the fact he was living out of the country. I find, however, that the Landlord's decision to conduct business from a distant location does not negate his duty to mitigate. In the event the Landlord was unable to advertise the unit in a timely manner, he could have asked a third party to act on his behalf.

I find that the Landlord did mitigate his losses when he advertised the rental unit on, or about, September 15, 2018. I find that in spite of those efforts he was unable to rent the unit for October or November of 2018 and I find he is entitled to compensation for lost revenue for those months, in the amount of \$5000.00.

On the basis of the tenancy agreement submitted in evidence I find that water and sewer were provided with the tenancy. As water and sewer were provided with the tenancy, I dismiss the Landlord's application to recover these costs.

The court held in *Derby Holdings Ltd. V. Walcorp Investments Ltd.* 1986, 47 Sask R. 70 and *Coronet Realty Development Ltd. And Aztec Properties Company Ltd. V. Swift*,

(1982) 36 A.R. 193, that where there is ambiguity in the terms of an agreement prepared by a landlord, the contra proferentem rule applies and the agreement must be interpreted in favour of the tenant. I find the contra proferentem rule applies to the claim for water and sewer charges. I find that item two of the addendum to the tenancy agreement, which stipulates that the Tenants must pay “full utilities” as of March of 2018, is ambiguous, as it contradicts the term in the tenancy agreement that stipulates water and sewer are included with the tenancy. I therefore find that the agreement must be interpreted to mean the Tenants are not required to pay for water and sewer.

On the basis of the undisputed evidence I find that the Tenants were obligated to pay for hydro and gas charges that were incurred during this tenancy. As the tenancy began on December 01, 2017 and ended on May 15, 2018, I find that the Tenants are obligated to pay for charges that were incurred between those dates. As the Tenants were only obligated to pay for charges that were incurred during the tenancy, I have not considered any of the charges that were not incurred between December 01, 2017 and May 15, 2018.

On the basis of the hydro bills submitted in evidence I find that the following hydro costs were incurred between December 01, 2017 and May 15, 2018:

- January 09, 2018 and March 08, 2018 - \$153.66
- March 09, 2018 and May 08, 2018 - \$135.46

As the Tenants were residing in the rental unit between January 09, 2018 and May 08, 2018, I find that they must pay \$289.12 in hydro costs.

On the basis of the gas bills submitted in evidence I find that the following gas costs were incurred between December 01, 2017 and May 15, 2018:

- February 02, 2018 to March 06, 2018 - \$247.52
- March 06, 2018 to April 06, 2018 - \$440.16
- April 06, 2018 to May 04, 2018 – \$587.41
- May 04, 2018 to June 05, 2018 - \$105.13

As the Tenants were residing in the rental unit between February 02, 2018 and May 04, 2018, I find that they must pay \$1,275.09 in gas costs. As the Tenants were residing in the rental unit between May 04, 2018 and May 15, 2019 I find that the Tenants are obligated to pay 11/33 of the bill in the amount of \$105.13, which is \$35.04.

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

### Conclusion

The Landlord has established a monetary claim, in the amount of \$12,499.13, which includes \$5,800.00 in unpaid rent, \$5,000.00 in lost revenue, \$289.00 for hydro, \$1,310.13 for gas, and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution.

Based on these determinations I grant the Landlord a monetary Order for \$12,499.13. In the event that the Tenants do not comply with this Order, it may be served on the Tenants, 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 *Act*.

Dated: September 21, 2019

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Residential Tenancy Branch