



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFL MNDCL-S MNDL MNRL OPC OPR

### Introduction

This hearing was scheduled to convene at 11:00 a.m. January 9, 2020 concerning an application made by the landlord seeking the following relief:

- an Order of Possession for unpaid rent or utilities;
- an Order of Possession for cause;
- a monetary order for unpaid rent or utilities;
- a monetary order for damage to the rental unit or property;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement;
- an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and
- to recover the filing fee from the tenant for the cost of the application.

The landlord attended the hearing, gave affirmed testimony and provided evidentiary material prior to the commencement of the hearing. The landlord also called 1 witness who gave affirmed testimony. However, the line remained open while the telephone system was monitored for in excess of 10 minutes prior to hearing any testimony and no one for the tenant joined the call.

The landlord testified that the tenant was served with the Application for Dispute Resolution and notice of this hearing (the Hearing Package), along with some of the evidence personally on November 20, 2019 with a witness present. The landlord has also provided video footage of such service. Some of the evidence of the landlord was not served to the tenant but sent by email, because the tenant vacated the rental unit and did not provide the landlord with a forwarding address.

The landlord's witness testified that he was present when the tenant was served personally by the landlord with the Hearing Package on November 20, 2019. The

witness also testified that the landlord explained to the tenant and to the witness at that time that the package also contained evidentiary material.

Having heard from the landlord and the landlord's witness, I am satisfied that the tenant has been served with the Hearing Package in accordance with the *Residential Tenancy Act*, as well as evidence that was served on that date. I decline to consider the evidence of the landlord that has not been served to the tenant, or provided to the tenant by email.

The landlord withdrew the applications for an Order of Possession.

#### Issue(s) to be Decided

The issues remaining to be decided are:

- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Has the landlord established a monetary claim as against the tenant for damage to the rental unit or property?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for late rent fees and excessive use of utilities?
- Should the landlord be permitted to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

#### Background and Evidence

The landlord testified that this fixed-term tenancy began on December 1, 2018 and reverted to a month-to-month tenancy after November 30, 2019. The tenant vacated the rental unit on December 3, 2019. Rent in the amount of \$1,550.00 per month was payable on the 1<sup>st</sup> day of each month. The rental unit is a lower unit in a 4-plex, and the landlord does not live on the property. A copy of the tenancy agreement with an Addendum has been provided as evidence for this hearing.

The landlord further testified that the tenancy agreement specifies a security deposit in the amount of \$775.00 and a pet damage deposit in the amount of \$775, and the parties had agreed that the deposits, as well as the first month of rent were to be set off by work performed by a contractor that the tenant worked for, but the work was not completed.

The tenant always paid rent by way of e-transfer and copies have been provided for this hearing. The tenant is in arrears of rent the sum of \$9,300.00, and the landlord has provided a spreadsheet showing that the following payments of rent have been made by the tenant:

- \$775.00 on February 3;
- \$775.00 on February 22;
- \$1,550.00 on February 22;
- \$1,500.00 on April 20;
- \$50.00 on April 24;
- \$600.00 on June 20;
- \$2,000.00 on June 28;
- \$500.00 on July 25; and
- \$1,550.00 on August 30, 2019.

The tenancy agreement also provides for a \$25.00 late payment fee for each month that rent is paid to the landlord late, and the landlord claims \$250.00 for 10 months of late rent. January, 2019 was the only month for which rent was paid on time.

The landlord also claims an overage of electrical usage and testified that the Addendum to the tenancy agreement specifies that: "5. Utilities are included in the rent; however, will be metered and monitored to ensure that they are within historical averages. If the utilities exceed the historical average, the tenant will be responsible for any overage use and will be required to reimburse the measured amount within 3 months of notification." The landlord has provided for comparison purposes a copy of a hydro bill covering the period of October 10 to December 6, 2018 in the amount of \$156.86 and a hydro bill covering August 9 to October 8, 2019 in the amount of \$174.11. The landlord testified that the tenant's usage was 600% higher, and the landlord claims \$129.87 for over-usage of hydro.

The landlord further testified that the rental unit re-rented effective January 1, 2020.

### Analysis

Firstly, the landlord filed the Application for Dispute Resolution prior to the end of the tenancy. The *Residential Tenancy Act* provides that a tenant must repair damages caused by a tenant prior to vacating. I find that the landlord's application for damage to the rental unit was made premature, and I dismiss that portion of the landlord's application with leave to reapply.

The *Act* also gives me the authority to make findings of fact or law with respect to tenancy agreements, not to agreements made between parties respecting employment or services rendered. In this case, the landlord testified that the parties agreed to payment of the security deposit and pet damage deposit and first month's rent for services rendered by the tenant's employer to the landlord and that those services were not completed. Whether or not the agreement of the parties included what work was to be done and how much that work was worth, I find that the tenant did not pay a security deposit or a pet damage deposit to the landlord, and the landlord's application seeking to keep the deposits is dismissed.

I have reviewed the evidentiary material that was filed by the landlord prior to the end of the tenancy, and I find that from January, 2019 to November, 2019 the tenant ought to have paid \$18,600.00 according to the tenancy agreement, but only paid a total of \$10,900.00. I am satisfied that the landlord has established a claim for unpaid rent totalling **\$7,700.00**. I also find that the landlord has established a claim of **\$250.00** for fees related to the late payment of rent.

With respect to the utility bill, the landlord testified that the tenant's usage of hydro was over 600% higher compared to the same period the year prior. I have reviewed the bills provided by the landlord, and I don't see that.

The October 10 to December 6, 2018 bill shows 1,413 kWh over a period of 58 days. It also shows a charge of \$0.1956 per day for a basic charge, as well as 2 steps of energy charges at \$0.08840 per kWh and \$0.13260 per kWh. It also says that the average daily cost of electricity for the bill period was \$2.57. The bill totals \$156.86.

The August 9 to October 8, 2019 bill, which is not the same time period, shows 1,528 kWh over 61 days with a charge of \$0.2090 per day for a basic charge and 2 steps of energy charges at \$0.0945 per kWh and \$0.1417 per kWh. It also states that the average daily cost of electricity for the bill period was \$2.71, an increase of 11 kWh per day compared to the same period the year previous, or 75%. The bill totals \$174.11.

It appears that the hydro costs were increased by BC Hydro. The term in the Addendum to the tenancy agreement, "...If the utilities exceed the historical average, the tenant will be responsible for any overage use and will be required to reimburse the measured amount." The difference between the 2 bills is \$17.25. I am not satisfied that the landlord has established any claim to utilities and I dismiss that portion of the claim.

Since the landlord has been partially successful with the application the landlord is also entitled to recovery of the \$100.00 filing fee.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$8,050.00.

This order is final and binding and may be enforced.

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 14, 2020

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Residential Tenancy Branch