



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

OPR, MNRL, MNDCL, CNR, MT

### Introduction

This hearing was convened in response to cross applications.

The Landlords filed an Application for Dispute Resolution, in which the Landlords applied for an Order of Possession for Unpaid Rent or Utilities, a monetary Order for unpaid rent or utilities, and a monetary Order for money owed or compensation for loss. At the hearing the Landlords withdrew the application for an Order of Possession, as the rental unit has been vacated.

The Advocate for the Landlord stated that the Landlords' Dispute Resolution Package was personally served to the Tenant sometime in January of 2020. The Tenant acknowledged receipt of those documents.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied to cancel a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities and for more time to apply to cancel that Ten Day Notice to End Tenancy for Unpaid Rent or Utilities. At the hearing the Tenant withdrew his Application for Dispute Resolution, as the rental unit has been vacated.

In January and February of 2020, the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant was unable to articulate if, or when, his evidence was served to the Landlord. The Advocate for the Landlord stated that the Tenant did not receive any documents from the Tenant for these proceedings, with the exception of the original Tenant Application for Dispute Resolution. As the Tenant was unable to articulate if, or when, his evidence was served to the Landlords, and the Landlords do not acknowledge receipt of the Tenant's evidence, I find that the Tenant has submitted

insufficient to establish his evidence was served to the Landlord. As the Tenant was unable to establish that his evidence was served to the Landlords, it was not accepted as evidence for these proceedings.

On February 18, 2020, the Landlords submitted evidence to the Residential Tenancy Branch. The Advocate for the Landlords stated that this evidence was sent to the Tenant, via registered mail, on February 23, 2020. The Tenant stated that he did not receive this evidence, nor did he receive notice that this registered mail had been sent.

As the Landlords submitted no documentary evidence to establish that evidence was sent by registered mail in February of 2020, nor were they able to cite a Canada Post tracking number to support the testimony that it was sent by registered mail, I find that the Landlords submitted insufficient evidence to establish this evidence was served to the Tenant. As the Landlords submitted insufficient evidence that this evidence package was served to the Tenant, it was not accepted as evidence for these proceedings.

On March 13, 2020, the Landlords submitted additional evidence and an Amendment to their Application for Dispute Resolution the Residential Tenancy Branch. The Advocate for the Landlords stated that these documents were not served to the Tenant, as they did not have a forwarding address for him. As these documents were not served to the Tenant, they were not accepted as evidence for these proceedings

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each party affirmed that they would provide the truth, the whole truth, and nothing but the truth at these proceedings.

#### Preliminary Matter #1

With the consent of both parties, the Landlord's Application for Dispute Resolution was amended to reflect the spelling of the Tenant's name, as it was provided by the Tenant in the Tenant's Application for Dispute Resolution and at the hearing.

#### Preliminary Matter #2

On March 13, 2020, the Landlords submitted an Amendment to an Application for Dispute Resolution in which they applied for additional compensation of \$2,100.00 in unpaid rent. As stated in the introduction, this document was not served to the Tenant. As this document has not been served to the Tenant, I find that it does not serve to amend the amount of the Landlords' claim for unpaid rent.

At the hearing the Advocate for the Landlords applied to amend the Landlords' Application for Dispute Resolution to include a claim for unpaid rent from March of 2020. The Tenant opposed this amendment, as he was no longer living in the rental unit in February of 2020 and was not, therefore, required to pay rent for March of 2020. The Advocate for the Landlords argued that the Tenant is obligated to pay rent for March of 2020, as he did not provide the Landlords with proper notice of his intent to vacate the rental unit on February 28, 2020.

I find that the Landlords are not applying to amend their Application for Dispute Resolution to increase the amount of their claim for unpaid rent. Rather, I find that they are applying to amend their Application for Dispute Resolution to include a claim for lost revenue as a result of the Tenant not giving proper notice of his intent to vacate the rental unit. I find that this a substantially different claim than the claim for unpaid rent.

Given the substantial difference between the two claims, I find it would be unfair to the Tenant to allow this amendment at these proceedings, as the Tenant has not been properly notified of the Landlords' intent to apply for compensation for lost revenue. I therefore dismiss the Landlords' application to amend the Application for Dispute Resolution to include a claim for lost revenue.

The Landlords retain the right to file another Application for Dispute Resolution in which they claim for compensation for lost revenue.

### Preliminary Matter #3

On March 13, 2020, the Landlords submitted an Amendment to an Application for Dispute Resolution in which they applied for additional compensation of \$190.23 in unpaid rent. As stated in the introduction, this document was not served to the Tenant. As this document has not been served to the Tenant, I find that it does not serve to amend the amount of the Landlords' claim for unpaid utilities.

At the hearing the Advocate for the Landlords applied to amend the Landlords' Application for Dispute Resolution to include an additional claim of \$190.23 for unpaid utilities. The Landlords acknowledge that the Tenant has never been served with copies of the unpaid invoices.

I find it would be unfair to the Tenant to allow this amendment at these proceedings, as the Tenant has never been notified that this amount is due. I therefore dismiss the

Landlords' application to amend the Application for Dispute Resolution to include an additional claim for unpaid utilities.

The Landlords retain the right to file another Application for Dispute Resolution in which they claim for compensation for these unpaid utilities.

#### Preliminary Matter #4

The Landlords were advised that their application for \$750.00 for damage to the rental unit is being refused, pursuant to section 59(5)(a) of the *Residential Tenancy Act (Act)*. This portion of the Application for Dispute Resolution is being refused because the Landlords did not provide sufficient particulars of this claim for compensation, as is required by section 59(2)(b) of the *Act*.

In reaching this conclusion, I was strongly influenced by the absence of a list of alleged damages that show how much compensation the Landlords are claiming for each damaged item. I find that proceeding with the Landlords' claim for damages at this hearing would be prejudicial to the Tenant, as the absence of particulars makes it difficult, if not impossible, for the Tenant to adequately prepare a response to the claims.

The Landlords retain the right to file another Application for Dispute Resolution in which they claim compensation for damage to the rental unit.

#### Issue(s) to be Decided

Is the Landlord entitled to a monetary Order for unpaid rent and/or unpaid utilities?

#### Background and Evidence

The Landlords and the Tenant agree that:

- this tenancy began in 2017;
- the Tenant was required to pay monthly rent of \$2,100.00 by the first day of each month;
- the Tenant was required to pay for hydro, gas, and utilities during the tenancy;
- the Tenant did not pay any rent for January or February of 2020;
- a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of January 29, 2020, was served to the Tenant; and
- the rental unit was vacated on February 28, 2020.

The Landlords are seeking compensation for unpaid rent for January and February of 2020.

In their original Application for Dispute Resolution, the Landlords applied for compensation of \$1,475.55 for unpaid hydro, gas and utility charges. On February 18, 2020, the Landlords submitted hydro/gas/utility invoices that total \$1,475.55. As previously stated in my introduction, these documents were not accepted as evidence for these proceedings.

The Advocate for the Landlords stated that each of the invoices totaling \$1,475.55 were shown to the Tenant shortly after they were received by the Landlords, although copies were not provided to him. The Tenants stated that sometimes invoices were shown to him, that he never received copies of any hydro, gas, or utility invoices; and he does not know if he paid any of these hydro, gas and utility charges, as he has not seen a copy of the invoices.

### Analysis

On the basis of the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$2,100.00 by the first day of each month and that the Tenant has not paid rent for January or February of 2020. As the Tenant is required to pay rent when it is due, pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$4,200.00 in rent for January and February of 2020.

On the basis of the undisputed evidence, I find that the Tenant was responsible for paying gas, hydro, and utility costs during his tenancy. I find that it is reasonable for a tenant to delay payment of such costs until such time as he is provided with copies of the gas/hydro/ and utility invoices.

On the basis of the undisputed evidence that the Tenant was never provided with copies of gas/hydro/ and utility invoices prior to the Landlords filing their Application for Dispute Resolution, I find that it is reasonable for the Tenant to withhold payment of those invoices until he is provided with copies of the invoices.

As the Landlords applied for compensation for unpaid utilities before proving the Tenant with copies of the invoices for hydro/gas and utility charges, I find that their claim for compensation for those charges has been premature and I dismiss their claim for such

compensation. The Landlords retain the right to file another Application for Dispute Resolution once the Tenant has been provided with copies of the invoices.

### Conclusion

The Tenant withdrew his Application for Dispute Resolution and the merits of his Application for Dispute Resolution were not considered.

The Landlord has established a monetary claim, in the amount of \$4,200.00, for unpaid rent and I grant the Landlords a monetary Order for the balance of \$4,200.00. In the event that the Tenant does not voluntarily comply with this Order, it may be served on the Tenant, 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: March 31, 2020

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Residential Tenancy Branch