



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Devon Properties Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNRL, MNDCL, FFL

### Introduction

The landlord seeks compensation from its former tenant for unpaid rent and utilities, pursuant to sections 26 and 67 of the *Residential Tenancy Act* ("Act"). In addition, the landlord seeks compensation to recover the filing fee, under section 72 of the Act.

The landlord's agent (the "landlord") and tenant attended the hearing on April 22, 2021.

### Preliminary Issue: Service of Notice of Dispute Resolution Proceeding and Evidence

The landlord gave oral and documentary evidence, including a Canada Post registered mail tracking number, that they served the Notice of Dispute Resolution Proceeding package on the tenant by way of registered mail shortly after they filed this application on December 14, 2020. Canada Post's "Track a package by tracking number" website indicates that the mail was accepted at the post office on December 21, 2020 and that it was out for delivery on December 22, 2020. A Notice card was left, but the mail remained unclaimed by the recipient and returned to the sender on January 11, 2020.

The tenant testified that they never received anything from the landlord, and that they were only made aware of today's hearing because of a notification email that was sent to them by the Residential Tenancy Branch on April 8, 2021 at 4:40 AM. Further, the tenant testified that they served a copy of their evidence (which consisted of one page of a scan of the face of a cheque) on the landlord about a week before the hearing.

What does not appear to have been served to the landlord are three additional photographs (of a cheque being deposited at the landlord's office), though these three photographs were submitted to the Residential Tenancy Branch's online service.

Section 89 of the Act requires that a Notice of Dispute Resolution Proceeding be served by one of several, specific means, one of which is by registered mail. Documents that are served by registered mail are deemed to be served within five days of being mailed (section 90(a) of the Act). Further, it is important to note that where a document is served by registered mail, a refusal of the party to accept or pick up the item does not override the deeming provision of section 90 of the Act. Where registered mail is not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing (see [Residential Tenancy Policy Guideline 12. Service Provisions](#), page 13).

After careful consideration of all the evidence before me, I find that the landlord served the tenant with the Notice of Dispute Resolution Proceeding package and their evidence in compliance with the Act.

### Issue

Is the landlord entitled to compensation?

### Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the issue of this dispute and to explain the decision, is reproduced below.

The tenancy began on October 1, 2013, long before the landlord took over management of the tenancy, which occurred in 2019. The tenancy ended (between the tenant and the landlord in this application) on October 6, 2020. After this date, the tenancy continued between the tenant and a new landlord, the latter of which is not a party to this dispute.

Monthly rent, which was due on the first of the month, was \$2,255.00. There was a security and pet damage deposit paid by the tenant, though those deposits were transferred from the old landlord (that is, the landlord in this dispute) to the new landlord. During the tenancy, the tenant was responsible for paying utilities. A copy of the written tenancy agreement was submitted into evidence.

The landlord testified that the landlord never received rent for October 2020. They seek \$2,255.00 in compensation for October rent. While the new landlord would have ordinarily collected rent for October, the landlord explained that it was agreed upon between them and the new landlord that the landlord would collect the rent for October and that the new landlord would start collecting rent in November.

In an effort to follow up and find out if perhaps the tenant had paid the new landlord, the landlord reached out to the new landlord who said that they had not received rent for October 2020. There is in evidence a copy of an email dated November 18, 2020 in which the landlord's agent seeks confirmation from the new landlord as to whether the tenant paid the new landlord rent for October. The new landlord answers, and says the following (reproduced as written):

The tenant pay me the rent start from Nov. 1, on the lawyer's PURCHASER'S STATEMENT OF ADJUSTMENTS I got my portion of October rent from Oct. 06. So for the rent for October, I suggest you email her directly.

In respect of the landlord's claim for unpaid utilities, they seek a total of \$897.54. A copy of two municipal utility bills were submitted into evidence. The landlord explained that the utility bills are in the landlord's name (which they are), and the tenant is responsible for paying the landlord the amount due after the landlord pays the amounts. In other words, the landlord is essentially reimbursed by the tenant for the cost of the utilities.

The first utility bill covers a billing period of March 11, 2020 to July 14, 2020. It shows an amount due of \$534.00. The second utility bill covers a billing period of July 15, 2020 to November 12, 2020. There is recorded a payment of \$534.00 made on August 24, 2020 (for the first utility bill), and an amount due by December 29, 2020 in the amount of \$516.62. There is some notation made on the utility bill in red, typed text, where the landlord calculates a pro-rated amount from July 15 to October 5 to be \$363.54.

Additional documentary evidence submitted by the landlord included a few emails between the parties, a rent ledger, and a monetary order worksheet.

The tenant testified that they "didn't realize" that the landlords were also (in addition to rent) seeking monies for unpaid utilities. They explained that they had a conversation with the new landlord about security and pet damage deposits, and the new landlord said that payment of those deposits was unnecessary. It appears that the old landlord transferred the deposits to the new landlord. The tenant further remarked that the new landlord's English is quite poor, and that it is difficult to have conversations with them.

In respect of the landlord's claim for unpaid utilities, the tenant was adamant that they paid the utility bill. Indeed, the tenant commented that the new landlord gave them a copy of the utility bill which shows a payment was made. The tenant testified that they always paid the utility bill by credit card. The utility account is now in the new landlord's name.

Regarding the landlord's claim for rent, the tenant testified that they gave the new landlord a rent cheque on October 1, 2020. The new landlord physically came to the rental property, the parties had some conversation, and the new landlord indicated that they would be needing rent cheques for the months to come. A photograph of a scan of the front of the cheque was submitted into evidence. A copy of the back of the cheque, or anything else such as a credit card statement or bank statement, is not in evidence.

### Analysis

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or some of the rent. For the purposes of section 26 of the Act, rent also includes money paid, or agreed to be paid, for the use of services or facilities, including that of utilities. While there is no reference on either the tenancy agreement or the tenancy agreement's addendum to the tenant's obligation to pay the utility bill, the tenant did not dispute that this was a requirement of the tenancy.

Section 7 of the Act states that if a party does not comply with the Act, the regulations or a tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Further, a party claiming compensation for damage or loss that results from the other's non-compliance must do whatever is reasonable to minimize the damage or loss.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Regarding the claim for rent, the landlord provided evidence in the form of oral testimony and a rent ledger showing that the tenant did not pay rent when it was due on October 1, 2020. Even if the new landlord had made some sort of arrangement to collect rent on October 1, there is no evidence of this. On the contrary, the documentary evidence before me, including the landlord's email to the new landlord dated November 18, 2020, persuades me to find that the tenant did not pay either landlord the rent on October 1, 2020. Perhaps they did, but there is no evidence to support such a finding.

While the tenant submitted a photograph of the front of a cheque purportedly made out to the new landlord, there is no evidence before me to find that this cheque was cashed.

Proof of the cheque being cleared would be the definitive proof that I would need to find that the new landlord did, in fact, accept (and cash) the rent cheque for October.

Taking into careful consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving their claim for compensation for unpaid rent in the amount of \$2,255.00.

In respect of the landlord's claim for utilities, the landlord argued that the tenant owes \$897.54. This amount is reflected in both utility bills. The landlord presumably paid both bills and now seeks to be paid by the tenant. The documentary evidence provided by the landlord regarding this amount and supporting its claim consists of two utility bills and an email from the landlord's agent to the tenant (dated November 18, 2020). There does not appear to be any response from the tenant to that email.

The tenant disputes the landlord's claim and was adamant that "I did pay it!" and that "it would not be OK if I had to pay these twice." The tenant passionately argued that they paid the full amount of the utilities, and that they paid for them by credit card. Finally, the tenant remarked that "this is not the first time they've said I hadn't paid it [the utilities]."

What is missing, however, is any documentary evidence before me to support the tenant's argument that they paid the utility bills. There are no copies of credit card statements or receipts reflecting that the utility bills were paid by the tenant. Moreover, while the tenant recalled paying the \$534.00 amount in August 2020 (again, with no supporting evidence), they did not say when they paid the final amount.

When two parties to a dispute provide equally reasonable accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, I find that it is the landlord which provides the "tipping point" evidence in the form of the utility bills and the email referencing the unpaid utilities to prove its case.

Therefore, taking into very careful and thoughtful consideration of all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has also met the onus of proving their claim for compensation for unpaid utilities in the amount of \$897.54.

Section 72 of the Act permits me to order compensation for the cost of the filing fee to a successful applicant. As the landlord succeeded in their application, I grant them \$100.00 in compensation to cover the cost of the filing fee.

In summary, the landlord is awarded \$3,252.54 in compensation for unpaid rent, for unpaid utilities, and for the cost of the application filing fee. A monetary order is issued in conjunction with this decision, to the landlord.

If the tenant disagrees with this decision, as I imagine they will, the tenant's relief is to file an Application for Review Consideration within fifteen days of receiving this decision, or, they may file for judicial review under the *Judicial Review Procedure Act*.

### Conclusion

The landlord's application is granted.

I hereby grant the landlord a monetary order in the amount of \$3,252.54, which must be served on the tenant. If the tenant fails to pay the landlord the amount owed, the landlord may file and enforce the order in the Provincial Court of British Columbia.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: April 22, 2021

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Residential Tenancy Branch