



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 1256206 BC Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCL, FFL

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order of \$7,125.67 for damage or compensation under the Act; and to recover the \$100.00 cost of their Application filing fee.

The Tenant and an agent for the Landlord, S.X. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing the Tenant and the Agent were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

### Preliminary and Procedural Matters

At the outset of the hearing, I asked the Agent for the Landlord's name in this matter, as the Landlord identified on the Application was different than that in the tenancy agreement, and neither name was a legal corporate entity. The Agent advised me of the property management company representing the owner, so I have amended the respondent's name in the Application, pursuant to section 64 (3) (c) and Rule 4.2.

The Landlord provided the Parties' email addresses in the Application. They confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

#### Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

#### Background and Evidence

The Parties agreed that the tenancy began on April 25, 2020, ran to February 28, 2021, and then operated on a month-to-month basis. They agreed that the Tenant paid the Landlord a monthly rent of \$2,600.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$1,300.00, and no pet damage deposit, and that the Landlord had returned the security deposit to the Tenant at the end of the tenancy. They agreed that the Tenant vacated the rental unit on February 22, 2021, and that she provided the Landlord with her forwarding address in writing pursuant to a previous dispute between the Parties.

The Agent submitted a monetary order worksheet that sets out the Landlord's claims in this matter.

	Source	For	Amount
1	[Landlord]	Rent for Apr 2020	\$ 650.00
2	[Landlord]	Rent for Feb 2021	\$2,600.00
3	[Landlord]	Rent for March 2021	\$2,600.00
4	[Landlord]	Gas bill	\$1,275.67
		<b>Total claim</b>	<b>\$7,125.67</b>

**#1 RENT FOR APRIL 2020 → \$650.00**

In the hearing, the Agent explained this claim, as follows:

She didn't pay for - only paid from May 1, never paid the days in April. Gave them notice every month. Our payment cycle normally is starting from 1<sup>st</sup> of every month, so for the remaining days of April it's \$650.00. Those five days in April equal \$650.00.

The Tenant said:

On our tenancy agreement it says that rent is paid on the 1<sup>st</sup> of the month; and the house was not in a good health and safety standard when I moved in, as you can see in the evidence. In the move-in condition inspection report ("CIR"), it clearly says the window in background broken, there was no lock on the front door, and there were cracks in windows, as well, so it was not safe. And there was no electricity in several outlets in rooms.

I pay rent on the first.

I asked the Tenant why she should be allowed to live rent-free in the rental unit for five days. She said: "Since tenancy agreement says rent is paid on the first. I think because the tenancy agreement say that payment starts on the first, I feel that that is fair. I paid for May on the first of May.

The Tenant acknowledged that she did not pay for the five days she lived there in April 2020

**#2 RENT FOR FEBRUARY 2021 → \$2,600.00**

The Agent said that the Tenant did not pay anything for February 2021, although she lived there for over three weeks of the month.

The Tenant said:

I also submitted a text correspond, which says, 'If you're willing to move out at the end of February, okay.' So, we did. Based on the four month notice laws, the last month of rent should be free, and since they asked us to move out early, I find that that's fair.

I asked the Agent if she gave the Tenant one month free, pursuant to a four month notice. However, the Agent said that she never served the Tenant a four month notice. In contrast, the Tenant submitted a Four Month Notice to End Tenancy for Demolition that was signed by the Agent and dated November 26, 2020 ("Four Month Notice"). It has the rental unit address, it was served by leaving a copy in a mailbox or mail slot at the address where the Tenant resides on November 26, 2020. The Four Month Notice has an effective vacancy date of March 31, 2021, and it was served on the grounds that the Landlord is going to demolish the rental unit.

The Agent submitted texts of discussions between the Parties prior to service of the Four Month Notice; however, the dates on these texts are in a different language that I cannot read.

The Agent said:

I never sent by registered mail or in mail slot or by hand. You can check my proof of text message between. I and [the Tenant]. I didn't serve them right way, no. The owner gave it to me, he said forward to them, but don't have a permit, so I won't serve any yet.

They left themselves. [The Tenant] didn't live in the house starting from November [2020], and other people – her former roommates lived there for the house. She left herself. She's just the person – her name is on the agreement. The others lived there for three to four months more.

The Tenant said:

I served evidence that the [Four Month Notice] was emailed to me – notice to end tenancy email and the notice to end tenancy document. It was served and the text messages image I submitted as well, shows [The Agent] saying if you wanted to move out early, so they could demolish it early without permits. I realized after the fact that the Landlord didn't act in good faith to evict us. We still left when they wanted us to.

The Tenant submitted an email she received from the Agent dated November 26, 2020, which states:

Hi [Tenant],

Please find the attached file of the four-months; notice to end the tenancy.

If you have any further questions please feel free to contact me.

Best regards,

[S.X.]

Property Manager

The Tenant submitted copies of the same texts that the Landlord did; however, more was redacted from the Tenant's versions. These texts included one from the Agent to the Tenant saying: "If you are willing to move out at the end of Feb or Mar, that is fine."

### **#3 RENT FOR MARCH 2021 → \$2,600.00**

The Agent explained this claim, as follows: "Because they didn't give us one month's notice. They just moved out."

I asked the Landlord about the status of the rental unit currently, and she said: "It is vacant. After that, I didn't take care of that house. I think it's vacant now."

The Tenant said she has no idea about the status of the rental unit now. She said: "No idea, but if it's vacant, it's not demolished. Considering how much time it's been..."

The Tenant said she submitted an email dated February 24, 2021, she received from the Agent, in which she agreed not to charge rent for March 2021. This email states:

There is a notice for Mar rent because we have not fixed the correspondence in our system. Will do it today.

Best regards,

[S.X.]

Property Manager

### **#4 GAS BILL OWING AT END OF TENANCY → \$1,275.67**

I asked the Agent to explain this claim, and she said:

Because they never opened their gas account. I didn't know that even. Gas not included in rent. The gas bill goes to the owner's account, so that is what they should pay.

On the bottom of page two of the tenancy agreement, it states that heat, natural gas, and electricity are not included in the rent; therefore, I find that they have to be paid by the Tenant.

The Tenant said she used BC Hydro to heat the home.

I asked the Landlord about the months in which she is claiming compensation for the Landlord in this matter, which includes April 2020. The Agent said:

I don't know what happened with the bill of this house. It seemed that the gas meter is disturbed by somebody else. But the owner paid two bills, one is if you check the papers the next one is \$764.34 for the period of [October 6, 2020 through February 17, 2021].

The Agent also included a gas bill for April 2020. I asked if she is claiming for this month, and the Agent said:

At the very beginning, they should open a gas account at Fortis and Hydro bill, but never opened a gas bill. But finally, I got this deal from the owner, so I have to collect from the Tenant. I don't know what happened - who made some mistake to open the bill at this address, but this is what I have. Not under my name, and some months not under owner's name, but this is what they used.

The Tenant responded, as follows:

See text message correspondence stating the owner will pay the gas bill. The owner will pay this bill now, and I will let you know when the owner stopped his account. [S.X.] never showed me that . . . due date March 12, 2021, but he never closed the account. I was never informed that they closed one account, and to open one.

The Tenant submitted the following email correspondence she received from the Agent dated February 22, 2021:

Hi [Tenant],  
The house is vacated in the night of Feb 19th. There is a gas bill that hasn't been paid. The owner closed his account on Oct 5th. This bill started on Oct 6th. As per the agreement the tenant is responsible for gas and electricity. I believe you

set up the hydro account under your name but never set up the gas account. The owner agreed to waive the gas cost for you before Oct 6th.

The cost of the gas from Oct 6th is 1275.67 (764.34 + 511.33). The 511.33 is the deposit the owner paid at the very beginning. [The gas company] covered a part of the unpaid cost from the deposit.

I could deduct the gas cost from your deposit. How do you think? Please let me know.

Best regards,  
[S.X.]  
Property Manager

The Agent said:

It doesn't matter, because whatever the owner paid first, the gas bill should go to the Tenant, because the gas is not included. The owner closed the bill or not, the Tenant should pay back to owner. If the Landlord never closed their account. The owner does not speak English. The Tenant should always pay the bill.

The Tenant said:

I also didn't hear anything about this massive gas bill until the end of the tenancy. It's called the first time I was notified about the gas bill. The day we vacated was the first time I heard about this gas bill. They didn't inform me of these bills.

The Agent said:

Because I never know if they open an account. They used the gas to heat the house and other things to cook everyday. I never know they didn't open their account. The Landlord didn't pay.

The Tenant said: "To add, again, it doesn't say anywhere that I'm responsible for the gas bill."

I asked the Tenant what they used gas for in the house, and she said:

I'm not sure how the mechanics of the house worked, to be honest. There was a

boiler in the basement and a heating vent, but again, I'm not sure how it all worked.

The Agent said: "The gas if for heat – gas forced air - gas for hot water, and gas for cooking." However, the Tenant said that the stove was electric, as was the cook top.

I asked the Agent if she gave the Tenant a demand letter for the gas bill, and 30 days to pay it. The Agent said: "Yes, I gave it to her; it is submitted." The Agent submitted the following demand letter she said was sent to the Tenant:

### **Demand for Payment**

To:

[Tenant]  
[rental unit address]

April. 8<sup>th</sup>, 2021

Dear [Tenant],

As of the above date, you still owe **\$1275.67** for utilities. You have **30 days** to make a payment. If you have any questions, please feel free to contact me before the expiration of **30 days** from the date of the service of this notice.

Best regards,  
[S.X.]

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

#### **#1 RENT FOR APRIL 2020 → \$650.00**

I find that the Tenant's reasoning for not paying rent for the days that she lived in the rental unit in April 2020 is flawed. According to this logic, if the Tenant had moved in on April 2, 2020, she would not have had to pay anything for having lived there for a month, less one day. As such, I reject the Tenant's reasoning in this regard.

Section 26 of the Act states: “A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.” There is no evidence before me that the Tenant had a right to deduct any portion of the rent from the monthly rent due to the Landlord.

However, the Agent did not explain how she calculated the rent for April 2020. If the rent was \$2,600.00 a month, and there were 30 days in April, the daily rate is \$86.67, times five days is \$433.35, not \$650.00.

Pursuant to section 26 of the Act, I award the Landlord with **\$433.35** in recovery of the unpaid rent from April 2020.

## **#2 RENT FOR FEBRUARY 2021 → \$2,600.00**

Based on the evidence before me, overall, I find that the Landlord served the Tenant with the Four Month Notice for demolition, pursuant to section 49 of the Act, although it appears that the residential property was never demolished. Further, the validity of the Four Month Notice is not an issue before me.

Policy Guideline #50, “Compensation for Ending a Tenancy”, states:

### **B. COMPENSATION FOR ENDING TENANCY FOR LANDLORD’S USE OR FOR RENOVATIONS AND REPAIRS**

Section 51(1) of the RTA requires a landlord who gives a notice to end a tenancy for landlord’s use under section 49 to pay compensation to the tenant for ending the tenancy. Under the RTA, a tenant who receives a valid notice to end tenancy for landlord’s use is entitled to receive from the landlord, on or before the effective date of the landlord’s notice, an amount that is the equivalent of one month’s rent payable under the tenancy agreement.

Section 51.4(1) of the RTA entitles a tenant who receives an order to end tenancy for renovations or repairs to receive from the landlord, on or before the effective date of the director’s order, an amount that is the equivalent of one month’s rent payable under the tenancy agreement. A tenant who is entitled to receive one month’s rent under these sections may instead withhold that amount from the last month’s rent. If the tenant ends the tenancy earlier in these circumstances, as permitted by section 50 of the RTA, and before withholding the

last month's rent, the landlord must refund that amount.

[emphasis added]

The Four Month Notice gave March 31, 2021 as the effective vacancy date; however, the Landlord submitted evidence that the Agent advised her by text: "If you are willing to move out at the end of Feb or Mar, that is fine." I note this was dated the same day as the Four Month Notice. Based on the evidence before me overall, I find that the Landlord authorized the Tenant to vacate the residential property at the end of February or March 2021.

Based on the evidence and authorities before me, I find that the Landlord was required by the Act to provide the last month of the tenancy for free. The last month was February 2021, therefore, I find that the Landlord has failed in its claim to recover rent for February 2021 from the Tenant. I dismiss this claim without leave to reapply.

### **#3 RENT FOR MARCH 2021 → \$2,600.00**

As noted above, I found that the tenancy ended on February 22, 2021, when the Tenant vacated the residential property, pursuant to a Four Month Notice and instructions from the Agent. Accordingly, I find that the Landlord is not eligible for rent for March 2021. As such, I dismiss this claim without leave to reapply.

### **#4 GAS BILL OWING AT END OF TENANCY → \$1,275.67**

Section 46 (6) of the Act sets out that a landlord may consider unpaid utilities as unpaid rent, if the landlord has served the tenant with a written demand for payment of them, and if the utility charges are unpaid for more than 30 days after receipt of the written demand.

Based on the evidence before me overall on this point, I find that the Tenant was responsible for paying the gas bill for the rental unit from October 6, 2020 to the end of the tenancy, as there is evidence before me that the Landlord "...agreed to waive the gas cost for you before Oct 6<sup>th</sup>".

The evidence before me is that the Landlord paid a deposit of \$511.33 "...at the very beginning"; however, the Agent did not explain what she meant by "the very beginning", nor why the Tenant is responsible for this amount. I find from the gas bill submitted by the Landlord that the Tenant is responsible for paying \$764.34 for gas used from

October 6, 2020 to February 17, 2021. I, therefore, award the Landlord with recovery of **\$764.34** from the Tenant pursuant to sections 46 (6) and 67 of the Act.

### Summary

The Landlord's claims were partially successful, as follows:

1. Recovery of unpaid rent from April 2020 - **\$433.35**
2. Rent for February 2021 - dismissed without leave to reapply
3. Rent for March 2021 - dismissed without leave to reapply, and
4. Recovery of unpaid utilities of **\$764.34**

The Parties advised me in the hearing that the Landlord had been ordered to return double the security deposit to the Tenant pursuant to a previous application and hearing. As such, the Landlord no longer holds any of the security deposit to offset against these monetary awards.

Given that the Landlord was partially successful in their Application, I also award them with half of the Application filing fee from the Tenant of \$50.00, pursuant to section 72 of the Act.

Pursuant to section 67 of the Act, I grant the Landlord a Monetary Order from the Tenant of **\$1,247.69**, which Order must be served on the Tenant, as soon as possible.

### Conclusion

The Landlord is partially successful in their Application, as they provided sufficient evidence to prove their first and fourth claims on a balance of probabilities. The Landlord is awarded \$433.35 in recovery of rent for April 2020, and the Landlord is awarded \$764.34 for recovery of unpaid utilities. The Landlord's claims for rent payment for February and March 2021 are dismissed without leave to reapply.

The Landlord is also awarded recovery of half of the Application filing fee for \$50.00.

The Landlord is granted a Monetary Order of **\$1,247.69** pursuant to section 67 of the Act from the Tenant. This Order must be served on the Tenant by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the

Act, and 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: November 24, 2021

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Residential Tenancy Branch