



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND, MNR, MNSD, MNDC, FF

### Introduction

The landlord applies for a monetary award for unpaid rent and utilities and for damages for garden and yard work allegedly necessitated by the tenant's neglect of a contractual obligation to maintain the garden and cut the grass.

The tenant admits owing the May 2014 rent of \$1700.00.

### Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that the landlord is entitled to any of the remaining relief?

### Background and Evidence

The rental unit is a three bedroom house owned by Ms. O.D., who is now 96 years old. Her son, Mr. R.D., and possibly her daughter, were persons responsible for the property during this tenancy.

The tenancy started in April 2012 for a one year fixed term at a monthly rent of \$1700.00. The term was renewed for another year and then, in the spring of 2014, converted to a month to month tenancy. The landlord holds an \$850.00 security deposit. The tenant gave notice to end the tenancy effective May 31, 2014. He says he left by then. The landlord's representative says he did not complete his move until June 5<sup>th</sup>.

An addendum to the tenancy agreement states, among other things, that the tenant agrees to pay all utilities, to have the oil tank filled upon termination of the lease and to "maintain the garden and cut the grass on a regular basis."

At the end of the tenancy the oil tank had not been filled. Mr. R.D. had the tank dipped by a heating oil provider who has provided a letter to say the cost to fill the tank will be \$1449.12.

The tenant argues that the tank was not measured when he moved in and that the home is for sale or sold so the new owner will be filling the tank.

The landlord's representative produced a District of Saanich Utility Bill dated June 5, 2014 stating an amount due of \$194.34. It is agreed the tenant has since reduced that bill by a \$150.00 payment. The tenant argues that he was given the \$150.00 quote from the District because the District's charge for garbage pick up is retrospective, including charges for garbage pick up in June, July and August.

The landlord's representative produced photographs of the premises, particularly the yard, arguing the tenant had done no discernable maintenance. He produced a \$700.00 bill from a tree service for various cleaning and removal service. The tenant argues the service included pruning and tree removal, for which he is not responsible.

The landlord's representative produced a \$252.00 bill from a gardener for cleanup, mowing, edging, trimming, weeding and "shaping the place."

### Analysis

I award the landlord the \$1449.12 cost of filling the oil tank. The addendum is clear; the tenant agrees to have it filled upon termination of the lease and that is what he must do or alternatively, pay to have the landlord fill it. It doesn't matter when or if the landlord has the tank filled, she is entitled to the cost of it.

Regarding the District of Saanich Utility Bill, I cannot agree with the tenant that the charges in it for garbage are charges in advance. The wording "(g)arbage charges for May through August 2014 – Effective May 1<sup>st</sup> garbage and organic collection charges reflect the size of carts delivered to the property" may simply be a notice that the garbage charges will, between May and August, reflect the size of the container.

I award the landlord \$43.34 for the balance of utility charges.

Regarding the tenant's obligation to "maintain the garden and cut the grass on a regular basis," I find that maintaining the garden would normally include watering and the taking away of debris and organic detritus but that it would not include the pruning of trees or shrubs, a much larger job and one normally requiring experience and aesthetic input.

To this extent I find the tenant did not maintain the garden. There is a profusion of dead plants and the boundaries appear to be long overgrown. Nor did the tenant properly care for the lawn. The landlord's photos show that it had been recently mowed but that it was brown, thin and rough in many places.

At hearing the tenant suggested he was unable to regularly attend to yard work in the back yard because he was concerned to be attacked by does defending their fawns. I am not prepared to accept such a claim without some expert opinion substantiating it.

Having regard to the photos of the yard and the work describe in the two bills, I consider the tenant to be responsible for half the work done to the yard after this tenancy and I award the landlord the amount of \$476.00.

The landlord is entitled to a monetary award of \$3669.46 plus recovery of the \$50.00 filing fee.

During the hearing Mr. R.D. stated that the home required cleaning. He did the cleaning himself and did not make a claim for it because it was his understanding, from reading material supplied by the Residential Tenancy Office, that because the tenant did not attend for the move-out inspection he had forfeited the \$850.00 security deposit. Mr. R.D. felt that the forfeited amount was adequate to cover the cleaning costs.

As mentioned at hearing, it was my view that I was bound to credit the tenant with the deposit even though it had been forfeited. I have now reviewed the Residential Tenancy Policy Guidelines and determine the tenant is entitled to credit for the deposit.

Section 36(1) of the *Residential Tenancy Act* (the "Act") provides:

- 36 (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if
- (a) the landlord complied with section 35 (2) [2 opportunities for inspection], and
  - (b) the tenant has not participated on either occasion.

I find the landlord's representative did give the tenant two opportunities: June 1 and June 5, to attend an inspection but the tenant did not participate. On the first, agreed date, he had not completed his move out and cleaning. On the second date he did not attend. The right of the tenant to return of his security deposit was therefore "extinguished." Oddly, the *Act* does not say what becomes of the deposit in these circumstances. Does it become the property of the landlord? Does it escheat to the Crown as a thing that has no owner? Later, in s. 39, the *Act* specifies that a landlord

“may keep” a deposit if a tenant fails to provide a forward address within a year after the end of a tenancy. Does this specific provision giving the deposit to the landlord mean that in other circumstances, such as the ones in this case, the landlord may not keep the deposit?

This issue seems to have been dealt with in Residential Tenancy Policy Guideline 17, “Security Deposit and Set off [*sic*]” which provides,

In cases where the tenant’s right to the return of a security deposit has been extinguished under section 24 or section 36 of the Act, and the landlord has made a monetary claim against the tenant, the security deposit and interest, if any, will be set off against any amount awarded to the landlord notwithstanding that the tenant’s right to the return of the deposit has been extinguished. In this situation, while the right to the return of the deposit has been extinguished, the deposit itself remains available for other lawful purposes under the Act.

In accordance with the guideline, I discount the monetary award by \$850.00, to \$2869.46. The landlord and her power of attorney Mr. R.D. will have a monetary order against the tenant in that amount.

#### Conclusion

I grant the applicants a monetary order against the tenant in the amount of \$2869.46.

I grant the landlord and her power of attorney any leave necessary to apply for damages for cleaning the rental unit after the tenancy.

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: August 07, 2014

---

Residential Tenancy Branch

