



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes            MND, MNR

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an a Monetary Order to recover unpaid utilities and a Monetary Order for damage to the rental unit.

Service of the hearing documents was done in accordance with section 89 of the *Act*, the tenant confirmed he had received them.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

### Issues(s) to be Decided

- What is the extent of the damage to the unit, site or property?
- Has the landlord provided sufficient evidence that the damage is caused by actions or neglect of the tenant?
- Are there outstanding utilities owed by the tenant to the landlord?

### Background and Evidence

This tenancy started on April 25, 2008 and ended on April 30, 2009. The tenants paid a monthly rent of \$1,600.00. The tenants had a verbal agreement with the landlord that they would have a utility equal payment plan and paid an additional amount each month of \$168.00 for their utilities.

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The landlord claims that during the tenancy the hydro bills were more than the tenants equal payment plan. She claims that this is normally equalled out over the year's payments however the tenant used more electricity then they planned for and owe an amount of Hydro at a sum of \$1,336.74.

The landlord claims that at the end of the tenancy they tenants had thoroughly cleaned the rental unit but had caused some damages. The landlord claims the tenants had broken three screens at a cost of \$60.48; two window handles were broken at an approximate cost of \$80.00; there was a water soaked ceiling at a cost of \$200.00; a towel rail had been pulled off the wall and the cost to repair the wall was \$80.00.

The tenants dispute the landlords' claims. The tenant attending the hearing stated that he had never seen a utility bill and understood that the equal payment plan was enough to cover their Hydro costs. The tenant also disputes the damages to the rental unit.

## Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. I find that in order to justify payment of damages under sections 67 of the *Act*, the Applicant landlord would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7. It is important to note that in a claim for damage or loss under the *Act*, the party claiming the damage or loss, in this case the landlord, bears the burden of proof and the evidence furnished by the Applicant landlord must satisfy each component of the test below:

### Test For Damage and Loss Claims

1. Proof that the damage or loss exists
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the *Act* or agreement
3. Verification of the Actual amount required to compensate for loss or to rectify the damage

4. Proof that the claimant followed section 7(2) of the *Act* by doing whatever is reasonable to minimize the damage or loss

Sections 23 and 35 of the *Act* say that a Landlord must complete a condition inspection report at the beginning of a tenancy and at the end of a tenancy in accordance with the Regulations and provide a copy of it to the Tenant (within 7 to 15 days). A condition inspection report is intended to serve as some objective evidence of whether the Tenant is responsible for damages to the rental unit during the tenancy.

The purpose of having both parties participate in a move in condition inspection report is to provide evidence of the condition of the rental unit at the beginning of the tenancy so that the Parties can determine what damages were caused during the tenancy. In the absence of a condition inspection report, other evidence may be adduced but is not likely to carry the same evidentiary weight especially if it is disputed. I find that the landlords claim for damages to the rental unit does not meet all of the components of the above test and consequently I dismiss this section of her claim without leave to reapply.

With regards to the landlords claim for unpaid utility bills. I find the landlord has submitted evidence of the BC Hydro billing history for this property. The tenants agree that their share of the Hydro bills were 75% of the total bill. However, I am not satisfied with the landlords' calculations for the amount outstanding. I find that the tenant's share of the Hydro bills for 2008 was \$1097.33 (75% share of total bill). The tenants paid a lump sum of \$400.00 on October 01, 2008 and two payments of \$168 (\$336.00) for November and December, 2008 this left the outstanding amount for 2008 to be **\$361.33**. The tenant's share of the Hydro bill from January to April 2009 was \$895.71 (75% share of total bill). The tenants agree they made four payments of \$168.00 (\$672.00) this left the outstanding amount for 2009 to be **\$223.71**.

I find the tenants owe utilities to the landlord of **\$585.04**. The landlord is entitled to a Monetary Order to recover this amount from the tenants



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## Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$585.04**. The order must be served on the respondent and is enforceable through the Provincial Court 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 *Residential Tenancy Act*.

Dated: January 08, 2010.

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Dispute Resolution Officer