



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant seeking a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (the "Act")*.

The parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross examine each other.

I note that despite several requests to the landlord to turn off his recording device, the landlord failed to comply with my request.

I further note that although the tenant listed the landlord and his wife as respondents and landlords, the wife is now deceased, which the tenant had not known.

I have reviewed all oral evidence before me. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

Is the tenant entitled to monetary compensation under section 67 of the *Residential Tenancy Act*?

### Background and Evidence

I heard testimony that this tenancy began on August 1, 2009, and ended on December 31, 2009, monthly rent was \$800.00 and the tenant paid a security deposit of \$425.00. The security deposit has been returned to the tenant.

The tenant's monetary claim is in the amount of \$220.00, which includes \$100.00 the tenant has alleged the landlord held back from her wages to care for and feed the

landlords' chickens while they were away, and \$120.00, which includes an estimated cost of hydro for the landlord's chicken coop for the length of the tenancy.

The tenant submitted a copy of a document which appears to be some form of an agreement between the tenant and the landlords. The document appears to be handwritten, on a piece of notebook paper and signed by the tenant only. The document referenced what work the tenant would perform during certain months, summer work and winter work, the wage for the work, and when rent was due. The document stated that rent was due on the "30" day of the month and payment of wages were on the 1<sup>st</sup> day of the month.

Although the amount of rent was not listed on this document, the testimony indicates that monthly rent was \$800.00.

In support of her claim for \$100.00, the tenant testified that she was due to make \$400.00 for the month of November caring for the landlords' chickens and cleaning the coop. However, the landlords held back \$100.00 and paid the tenant only \$300.00. The tenant submitted that she worked the entire month of November and should have received \$400.00.

In support of her claim for \$120.00, the tenant estimated this cost to be an average of \$30.00 per month for hydro costs for the chicken coop. The tenant submitted that she was not informed that the electrical line to the chicken coop was on her electrical meter.

The tenant submitted that she did not discover the chicken coop was connected to her meter until the end of October 2009. The tenant testified that she did not know how much extra in hydro the chicken coop caused her to pay, but that someone from the hydro office said \$30.00 per month was fair for the heaters, fans and lights in the coop.

In response, the landlord stated that there were just two lights in the chicken coop and that the heater was on a timer.

The landlord further submitted that the tenant knew the chicken coop was connected to her meter and that the parties' verbal agreement was that the cost of hydro for the coop was included with the tenant's wages.

The landlord submitted that the landlords were away for just one week in November 2009, and that the tenant was fairly compensated for the amount of work she performed.

### Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss, in this case the tenant, has the burden of proof to establish her claim on the civil standard, as follows:

**First** proof that the damage or loss exists, **secondly**, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, **thirdly**, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and **lastly** proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

As to the tenant's claim for \$100.00, the nature of that dispute appears to be more of a contract for services, i.e. an employment contract, and therefore, not within the jurisdiction of the Residential Tenancy Act.

I therefore decline to find jurisdiction to resolve this dispute regarding the claim for \$100.00.

The parties are at liberty to seek the appropriate legal remedy to this dispute.

As to the tenant's claim for \$120.00 for hydro to the chicken coop, I accept the testimony of the tenant that she was unaware that she was paying for hydro for the landlords' chicken coop and that she did pay extra for that hydro. However, the tenant has failed to provide any documentary evidence substantiating the claim. I find the submission of a hydro bill to be inconclusive.

However, I am not persuaded by the landlord's arguments that the tenant knew she would be paying for the hydro costs of the chicken coop and that the tenant knew the payment of wages would include those hydro costs. I find this testimony lacks credibility. Additionally, the landlord failed to provide the tenant with a tenancy agreement in the approved form, as required under the Act, and I find this failure further discredits his argument that the tenant was to be responsible for the landlord's chicken coop hydro cost.

Residential Tenancy Branch Policy Guideline 16 suggests that a dispute resolution officer may award "nominal damages," which are a minimal award. These damages

may be awarded where the burden of proof of a loss has not been met, but they are an affirmation that there has been an infraction of a legal right.

I find the tenant is entitled to an award of nominal damages of **\$10.00** per month from August 1 to December 31, 2009, in recognition that the tenant supplied the hydro for the landlord's chicken coop, for a total of **\$50.00**.

### Conclusion

I therefore **grant** the tenant a monetary order in the amount of **\$50.00**, for nominal damages.

I am enclosing a monetary order for \$50.00 with the tenant's Decision. This order is a **legally binding, final order**, and it may be filed in the Provincial Court (Small Claims) should the tenant fail to comply with this monetary order.

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 02, 2011.

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Residential Tenancy Branch