



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, OPB, MNR, FF

### Introduction

This hearing dealt with the landlords' Application for Dispute Resolution for an Order of Possession, for a monetary order for unpaid rent, and to recover the filing fee for the Application.

Although served with the Application for Dispute Resolution and Notice of Hearing via personal delivery on July 18, 2011, the tenant did not appear. The landlords successfully demonstrated sufficient delivery of the documents under Section 89 of the Residential Tenancy Act (the "Act"). Thus the hearing proceeded in the tenant's absence.

The landlords appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form, and make submissions to me.

I have all reviewed all evidence which met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

As a preliminary issue, upon query, the landlords stated that the tenant vacated the rental unit between July 20 and 22. The landlords stated they no longer required an order of possession due to the rental unit being vacant. As a result, I have excluded the landlord's request for an order of possession.

### Issue(s) to be Decided

Are the landlords entitled to a Monetary Order under section 67 of the *Residential Tenancy Act* (the "Act") and to recover the filing fee?

### Background and Evidence

This month to month tenancy began on March 27, 2010, monthly rent was \$675.00 and the tenant paid a security deposit of \$337.50 on March 23, 2010.

On the landlords' application, the landlords sought a monetary order for \$1,050.00 for an unpaid utility bill.

The landlords also testified that they are requesting to retain the security deposit due to the alleged damages to the rental unit by the tenant. However, I note that the landlords did not make an application to retain the security deposit; rather the request came in an additional submission of evidence requesting to keep the security deposit.

I explained that I would allow the landlords to retain the security deposit in partial satisfaction of their monetary claim, if they met the burden of proof required to establish an entitlement.

The landlords refused this option, instead stating that they were claiming this amount in addition to the unpaid utility for the damages left by the tenant.

I gave the landlords the option of dismissing their application with leave to reapply in order to seek other grounds, but the landlords also refused this option, stating they did not want to “go through this again.”

I then informed the landlords the hearing would proceed on their application for a monetary order of \$1,050.00 for unpaid utilities and recovery of the filing fee.

The landlord testified that the gas to the rental unit was cut off by the utility company, due to non payment by the tenant.

The landlords do not have a bill indicating any amount owed by the tenant, nor had any indication how long the gas had been turned off. The landlords stated that the utility company would not release that information, but the landlord speculated that the gas bill was probably not paid for three months.

The landlord stated that the tenant at one time told her that he could not pay \$400.00 for a monthly gas bill.

The landlords have not made any payments towards a gas bill.

### Analysis

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

Awards for compensation are provided under sections 7 and 67 of the Residential Tenancy Act (the “Act”). In order to be successful in obtaining an award for damage or loss, it is not enough to allege a violation of the Act, regulations or tenancy agreement by the other party. Rather, the Applicant/landlord must establish all of the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation of the other party has caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,

4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Where the claiming party has not met all four elements, the burden of proof has not been met and the claim fails.

The landlords supplied no evidence that the tenant owed a bill to the utility company or that the landlords have paid a utility bill on behalf of the tenant. I further find the landlords have not suffered a loss for alleged unpaid utilities. I therefore find the landlords submitted insufficient or any evidence to prove steps one, two and three, of their burden of proof.

In the absence of proof of a loss, I **dismiss** the landlords' Application, **without leave to reapply**.

As I have dismissed the landlords' application, I **direct** that the landlords to return the tenant's security deposit in accordance with Section 38 of the Act.

#### Conclusion

The landlords' application is dismissed, without leave to reapply.

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 15, 2011.

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Residential Tenancy Branch