



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNDC, FF

### Introduction

This hearing dealt with an application by the tenants for a monetary order for the cost of emergency repairs, money owed or compensation due to damage or loss and recovery of the filing fee. Both parties participated in the conference call hearing.

### Issue(s) to be Decided

Is the tenant entitled to any of the above under the Act.

### Background and Evidence

The tenants testified that they had a water heater stored in the landlord's garage and that when the water heater in their unit developed a small leak they asked the landlord if their water heater could be installed in the rental unit. The water heater in question had been given to the tenant and the tenant completed installation of the water heater.

The landlord testified that she had agreed to let the tenant install the water heater but the tenant had never advised the landlord at any time that he would be charging her for the water heater and installation. The landlord stated that it was almost two years later when the tenant advised the landlord that he wanted \$850.00 for the water heater and installation.

The tenant then stated in this hearing that he would withdraw this portion of his claim and not seek \$850.00 compensation for replacement of the water heater. Therefore this portion of the tenant's claim is dismissed.

The tenants testified that in mid December 2008 a sprinkler pipe in the roof of the building froze and burst causing severe damage to the tenant's rental unit. As a result of this damage the tenants had to vacate their rental unit and were not able to return until the second week of April 2009.

The tenants stated that they had paid a full month's rent for December 2008 and a full month's rent for April 2009 and that they are seeking a total of \$663.75 compensation for rent paid while they were not in the rental unit. This amount is comprised of \$442.50 compensation which is equal to ½ month's rent for December 2008 and \$221.25 compensation for 1 week of April 2009.

The landlord testified that she was agreeable to the \$442.50 compensation for ½ month's rent for December 2008 but the landlord was adamant that the tenants had been given reduced rent for April 2009. The tenants argued that they had paid the April 2009 rent in full and the landlord maintained her position that the April 2009 rent had already been reduced.

The tenants stated that during the time they were out of the rental unit the landlord's insurance adjuster verbally requested that the tenants leave the gas and hydro connected. The tenants stated that they agreed to this as the insurance adjuster told the tenants they would be reimbursed for the expense of the utilities. During this time the tenants incurred a total cost of \$788.38 in gas and hydro bills which they are now seeking compensation for. The tenants attempted to claim this expense through their insurance claim but were denied and when they approached the landlord with a request for her to claim this amount through her insurance company the landlord's claim was already closed and an additional claim could not be made.

The tenants argued that they could have had the services disconnected and only have to pay the approximately \$225.00 in re-connection fees which they could have claimed through their insurance company. The landlord stated that the tenants could have claimed the cost of utilities through the 'Additional Living Expenses' section of their insurance but that they had neglected to. The landlord stated that as the tenants could have had the services disconnected and could have claimed this expense through their insurance that it was not now her responsibility to pay the utility bill because neither of those were done.

The tenants are seeking to have the landlord reimburse them the \$500.00 insurance deductible that the tenants paid to file their claim. The tenants maintain that the landlord did not properly maintain the sprinkler pipes therefore the landlord is responsible for the cost of their deductible. The landlord stated that no fault was found in regards to the burst pipe as the pipe burst to unseasonably cold temperatures. The landlord stated that she had checked with her insurance adjuster regarding this matter and was advised that she was not responsible to pay the tenant's deductible as she was not found to be at fault.

The tenants in this application are seeking \$1957.10 compensation for over payment of rent, utilities and the insurance deductible.

### Analysis

Based on the documentary evidence and testimony of the parties I find on a balance of probabilities that the tenants have met the burden of proving that they have grounds for entitlement to a monetary order for an overpayment of rent. Both parties agree to the overpayment of \$442.50 for December 2008 and the tenants will be awarded this amount.

As the parties do not agree on whether or not the April 2009 rent was reduced or paid in full and in the absence of the April 2009 rent cheque or bank statement reflecting how much rent the tenants actually paid for April 2009, I find that the tenants are not entitled to this portion of their claim for overpaid rent. Therefore this portion of the tenant's application is dismissed without leave to reapply.

Based on the documentary evidence and testimony of the parties I find on a balance of probabilities that the tenants have not met the burden of proving that they have grounds for entitlement to \$788.38 compensation for the gas and hydro bills. While the tenants acted on a verbal agreement with the landlord's insurance adjuster there is no agreement in writing with the insurance adjuster that verifies this arrangement. The tenants could have pursued this portion of their claim through their insurance company but did not do so and it is therefore not now reasonable for the landlord to bear the responsibility of this expense. Therefore this portion of the tenant's application is dismissed without leave to reapply.

Based on the documentary evidence and testimony of the parties I find on a balance of probabilities that the tenants have not met the burden of proving that they have grounds for entitlement to \$500.00 compensation for their insurance deductible. The landlord was not found to be negligent in their duties as a landlord or maintenance of the building. The flood had in fact been caused by unusual circumstances and as no blame has been assigned, the tenants are responsible for paying their \$500.00 insurance deductible. Therefore this portion of the tenant's application is dismissed without leave to reapply.

As the tenants have had some successful in their application they are entitled to recover \$25.00 of the \$50.00 filing fee.

### Conclusion

I find that the tenants have established a monetary claim for \$442.50 for over paid rent. The tenants are also entitled to recover \$25.00 of the \$50.00 filing fee.

**The tenants may one time, deduct a total amount of \$492.50 from future rent owed to the landlord to recover this award.**

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: September 30, 2011.

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Residential Tenancy Branch