



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC, FF

### Introduction

This matter proceeded by way of a conference call hearing, pursuant to the *Residential Tenancy Act* (the “Act”), and dealt with an Application for Dispute Resolution by the Landlord for a monetary order for compensation for damages and losses relating to outstanding electricity and gas bills, recovery of the filing fee for the cost of this Application, and the Landlord also requests to amend their Application to include a request that a previous decision of August 18, 2010 awarding the Tenant double the security deposit be changed.

Both parties appeared, gave affirmed testimony and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

### Preliminary Matter(s)

The Landlord’s Agent stated at the hearing and in the written submission of evidence prior to the hearing that the Landlord feels a prior decision (August 18, 2010) awarding the Tenant double the security deposit was incorrect. The Landlord stated that an excess of \$400.00 was granted in that decision as the decision should not have been doubled.

I find that due to section 77(3) of the Act and the legal principal of Res judicata, I cannot grant the Landlord’s request to hear the issue of the security deposit as this matter was already heard and decided upon at the hearing of August 09, 2010 and a decision was issued on August 18, 2010 awarding the Tenant double the security deposit. Additionally, section 80 of the Act sets out the time frames in which a Review of a decision can be applied for. The Landlord did not file for a Review as required by the Act. The Landlord’s request to change that decision is dismissed.

During the course of the hearing, the parties reached an agreement, pursuant to section 63 of the Act, to settle the issue of the outstanding electricity and gas bill raised in the Landlord’s Application.

The settlement agreement of the Landlord and Tenant in regard to this application is as follows:

1. The Tenant agrees to pay the Landlord \$239.95 which represents her portion of the utility bills owing at the end of her tenancy.

#### Issue(s) to be Decided

Should the Tenant be ordered to pay the filing fee?

#### Background and Evidence

The parties agree that the tenancy began July 2009 and ended March 15, 2010. The parties agree that they had a verbal written tenancy agreement. The parties agree that the rent was \$800.00 per month and that the Tenant had paid a security deposit of \$400.00 at the time the tenancy commenced. The parties agree that the Tenant was responsible for 25% of the electricity and gas bill for the house. The Landlord resided in the upper part of the house and the Tenant rented the basement suite.

The Landlord stated that the Tenant did not pay her portion of the electricity and gas bill when the tenancy ended. Landlord requests that the Tenant pay them \$239.95 for outstanding electricity and gas bills and reimburse them for the \$50.00 filing fee for this Application.

The Tenant stated that she agrees that she owes the Landlord \$239.95 for the outstanding electricity and gas bills and does not dispute this. The Tenant stated that she thought that the Landlord had to go to arbitration to get this resolved with her before payment could occur. The Tenant stated that she is willing to pay this amount to the Landlord after the hearing decision.

The Tenant stated that she had previously made an Application for a dispute and the filing fee was waived. The Tenant stated that she does not know why the Landlord had to pay a filing fee.

#### Analysis

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

Section 59 of the Act requires an Applicant to pay a filing fee before the Application can proceed for dispute resolution. However, in cases where the Applicant proves financial difficulty at the time of filing their Application section 59 (4) of the Act states:

The director may waive or reduce the fee if satisfied that

- (a) the applicant cannot reasonably afford to pay the fee, or
- (b) the circumstances do not warrant the fee being collected.

The Tenant does not dispute that she owes the Landlord \$239.95 for the outstanding electricity and gas bills. The Tenant stated that she felt the Landlord had to go to arbitration to resolve the outstanding electricity and gas bills with her, so I find that the filing fee cost incurred by the Landlord is the result of the parties not settling their issues on their own prior to filing for dispute resolution. I find that on the balance of probabilities the Landlord had to come to a hearing to resolve their dispute with the Tenant.

As a result, I find that it is appropriate to order the Tenant to pay the Landlord for the filing fee for this Application (\$50.00) pursuant to section 72 of the Act.

The Tenant agrees the outstanding electricity and gas bill (\$239.95) is owing to the Landlord, as stated in the settlement agreement contained in the preliminary portion of this decision.

I find that the Landlord is entitled to a monetary order totaling \$289.95.

### Conclusion

I find that the Landlord is entitled to monetary compensation pursuant to section 67 and 72 in the amount of **\$289.95** comprised of compensation for outstanding electricity and gas bills, and the filing fee.

This order must be served on the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The order is attached to the Landlord's copy of the decision.

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 13, 2012.

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Residential Tenancy Branch