



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MND, MNDC, FF

### Introduction

This conference call hearing was convened in response to the landlord's application for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for unpaid rent or utilities, and for damage to the rental unit; and to recover the filing fee associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions. At the outset the landlord confirmed that the amount specified in the claim concerns unpaid rent and utilities only. Therefore the landlord's evidence concerning damages is not considered in these proceedings.

### Issue(s) to be Decided

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to recover the filing fee?

### Background and Evidence

The rental unit consists of the upper level of a single detached home. There was no written agreement for this month to month tenancy, which started on November 1, 2011 and ended February 28, 2012. The rent was \$600.00 per month and the tenants did not pay a security deposit.

The landlord testified that the parties verbally agreed to pay the utilities. In his documentary evidence, the landlord provided a handwritten notice dated February 29, 2012 concerning unpaid rent and utilities.

Based on that notice, the landlord submitted a monetary claim as follows:

- February 2012 rent:	\$600.00
- Hydro:	\$180.37
- Sub-total:	\$780.37
- Amount paid:	\$565.00
- Balance owed:	\$215.37
- Hydro from Jan.11 to Feb.27:	\$240.18
- Landlord's portion:	\$ 40.18
- Balance owed:	\$200.00
- Total claimed by landlord:	\$415.37

The tenant testified that he asked the landlord to see the hydro invoice before paying any portion of the bill. In his documentary evidence the tenant provided a written letter to the landlord dated February 28, requesting that he produce the invoices. The tenant stated that he felt that the sharing of the utilities was not equitable, and that it would appear that he is shelling out 90% of the cost, which, he stated, is a disproportionate amount. Without evidence of the amount payable for utilities, the tenant said that the \$565.00 paid in February was for rent, and that he is therefore \$35.00 in arrears for unpaid rent. The tenant said that the landlord never produced the invoices in question.

### Analysis

Before a Dispute Resolution Officer can make an order under section 67 of the *Residential Tenancy Act*, the applicant must first prove the existence of damage or loss; that it stemmed from the other party's violation of the Act, regulation, or tenancy agreement; that the monetary amount of the claim was verified; and that the applicant took steps to mitigate or minimize the loss or damage. When these requirements are not satisfied, and particularly when the parties' testimonies are at odds, in the absence of other substantive independent evidence the burden of proof is not necessarily met. In this matter that burden was on the landlord to prove his claim against the tenant.

There was no written agreement concerning the terms of this tenancy, and there were no stipulations agreed upon concerning utilities. The landlord did not substantiate his claim by providing a copy of the utilities; the dividing of the utilities and the claimed amount appeared to be arbitrary, and it was not supported by documentary evidence. In the absence of more substantive evidence I am unable to ascribe an amount for unpaid utilities and I dismiss this aspect of the landlord's application.

The parties agreed that the tenant is \$35.00 in arrears for unpaid rent and the landlord is entitled to recover that amount.

### Conclusion

The landlord established a claim of \$35.00. Since the landlord was partially successful, I award the landlord \$25.00 towards partial recovery of the filing fee. Pursuant to Section 67 of the Act, I grant the landlord a Monetary Order totalling \$60.00.

This Order may be registered in the Small Claims Court and enforced 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: May 15, 2012.

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Residential Tenancy Branch