



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, OLC, RR, FF

### Introduction

This hearing was convened by way of conference call in repose to the tenants application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for an Order for the landlord to comply with the Act, regulations or tenancy agreement; for an Order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided and to recover the filing fee from the landlords for the cost of this application.

This was a joint hearing scheduled for six applicants and the landlord. Each applicant deals with the same issues however the Monetary amounts claimed are different.

The tenants and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenants provided documentary evidence to the Residential Tenancy Branch and to the other parties in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Issue(s) to be Decided

1. Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?
2. Are the tenants entitled to an Order for the landlords to comply with the *Act*?

3. Are the tenants entitled to reduce their rent for repairs, services or facilities agreed upon but not provided?

### Background and Evidence

This is a 42 unit complex and the six tenants who have filed their applications all live in a unit within this complex. There is no dispute that each tenant has entered into a written tenancy agreement with the landlord. The tenancies vary in their length and the amount of rent paid for each unit. It has been determined in a previous hearing that there was a mutual understanding with each of the tenants' that Hydro is included in the rent.

The previous hearing took place after the tenants had filed an application for the landlord to comply with the *Act*, to deal with the landlord's transference of Hydro into the tenants name with a subsequent rent concession. The tenants sought remedy to have this essential service returned to the landlords name at the owners' expense.

The previous decision dated June 29, 2012 upheld the tenants request and the landlord was ordered to transfer back responsibility for the Hydro accounts to the landlords from the tenants effective by August 01, 2012. The landlords were also ordered that they may terminate the monthly rent reductions to the tenants which were introduced for some of the subject tenants due to the transfer of the Hydro into the tenant's names. The landlord was further ordered that they may withdraw the offer of "no rent increases" which was also made in association with the transfer of the Hydro accounts and that future rent increases may be introduced in compliance with the relevant statutory provisions.

### **Monetary Order**

The tenants now seek a Monetary Order for compensation for the Hydro charges they have had to pay when the landlord had the Hydro put into the tenants' names. The

tenants seek to recover the amount of the Hydro bills less any rent reduction the landlord gave the tenants when the Hydro was put into the tenants' names.

Each tenant has a different amount claimed for Hydro bills. The tenants state they had not received all the Hydro bills up to the period when it was put back into the Landlords' name before they filed their applications. The tenants ask me to consider the additional amounts over and above what they have claimed and will send these additional hydro bills to the landlord so he has the evidence of the final total of Hydro paid by each tenant.

LR in unit 301 claims Hydro costs up to August 01, 2012 of \$736.32. Less the amount of \$300.00 in rent reductions. The tenant seeks the amount of **\$436.32** from the landlord and seeks to have this sum taken off future rent payments to the landlord.

DH in unit 306 claims Hydro costs up to August 01, 2012 of \$500.05. Less the amount of \$125.00 in rent reductions. The tenant seeks the amount of **\$375.05** from the landlord and seeks to have this sum taken off future rent payments to the landlord.

JR in unit 105 claims Hydro costs up to August 01, 2012 of \$1012.96. Less the amount of \$330.00 in rent reductions. The tenant seeks the amount of **\$682.96** from the landlord and seeks to have this taken off future rent payments to the landlord.

PD in unit 309 claims Hydro costs up to August 01, 2012 of **\$655.23** up to August 01, 2012. The tenant states that she did not receive a rent reduction from the landlord. The tenant seeks to recover the Hydro paid by taking the amount from future rent

JH in unit 302 claims Hydro costs up to August 01, 2012 of **\$880.47** this includes a connection fee of \$26.25 which the tenant testifies she deducted from her rent. The tenant states she will give the landlord a cheque today for this amount to avoid being in rent arrears. The tenant states she did not receive a rent reduction from the landlord. The tenant seeks to recover the Hydro paid by taking the amount from future rent

MD in unit 305 claims Hydro costs up to August 01, 2012 of **\$466.34**. The tenant states she did not receive a rent reduction from the landlord. The tenant seeks to recover the Hydro paid by taking the amount from future rent.

### **Comply with the Act**

The tenants did not disclose any part of the *Act* that the landlord has failed to comply with.

### **Rent Reduction.**

The tenants withdraw this section of their claim.

The landlord testifies that this dispute has previously been heard on June 25, 2012. The landlord testifies that the same issues were discussed and no resolution was made as the tenants refused to negotiate a settlement. The landlord objects to this matter being dealt with again. The landlord testifies that they choose not to raise the rent for a number of years and in doing so they feel that they have now been penalized as the tenants have made a significant saving over the period that the rent has not been raised. The landlords testify that if the tenants are successful the landlord should at least be credited with the amounts provided in evidence for each tenant for the rent increases the landlord could have made but didn't.

The landlord argues that not all the tenancy agreements show that rent includes Hydro and it was an assumption because that's how the landlords had operated the building for the previous period. The landlords argue that after the tenants Hydro was put back into the landlords' name only these six tenants have filed an application and feel they are being treated unfairly.

The landlord states that he would like it to be considered that the landlords should be allowed to have the rent increase they did not impose on the tenants last year. The landlord proposes a settlement to the tenant to deduct the amount from their claim of the rent increase that the landlord could have imposed last year.

The tenants decline the landlord's settlement and state that it was a poor business decision by the landlord not to have imposed rent increases each year. The tenants' testify that the landlord originally told the tenants that the Hydro would only be \$25.00 each month when clearly this was not the case.

The landlord GG testifies that each tenant has the ability to regulate the temperature in their own units and this is reflective on their Hydro bills. The landlord GG states that he hopes now that the tenants Hydro bills will not increase.

The landlords want me to note that they feel they have done their due diligence and are being penalized for doing what the *Act* allows them to do.

The tenants testify that the parties had agreed at the previous hearing that Hydro was included in their rent even though it was not written on all their tenancy agreements.

The tenants request the return of their filing fees of \$50.00 for DH and \$25.00 for each of the other five tenants.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of all parties.

To address the landlords comments that the tenants tenancy agreements did not all state that Hydro was included in the rent; If the tenants have previously been provided with Hydro that was included in their rent throughout their tenancies then it is considered that Hydro was included in the rent and as such the landlord is not entitled to amend or alter that agreement without the tenants permission.

The landlords argue that as they had not previously imposed a rent increase upon the tenants that this should be taken into consideration to determine any monies owed to

the tenants. It is my decision that if the landlords do not impose an annual rent increase in accordance to s. 42 of the *Act* then landlords cannot now ask for a rent increase to be considered retrospectively.

The landlords argue that they are being penalized for doing what the *Act* allows them to do. However, I find that at the previous hearing it was deemed that the Hydro is essential to the tenants use of the rental unit as living accommodation and that provision of Hydro is a material term of a tenancy agreement in accordance with s. 27(1)(a) ad 27(1)(b) of the *Act*. Consequently, it is my decision that as the landlords were in non-compliance with the *Act* regarding the Hydro as stated at the previous decision. The tenants are therefore entitled to recover the Hydro paid when it was put into the tenants names less any rent reductions any tenant received to compensate them for the Hydro transference.

As the tenants have been largely successful the tenants are entitled to recover their filing fees from the landlord pursuant to s. 72(1) of the *Act*.

### Conclusion

I HEREBY FIND in favor of the tenants' monetary claim.

LR in unit 301 is entitled to recover \$436.32 plus \$25.00 for the filing fee to the sum of **\$461.32**. The tenant is entitled to deduct \$100.00 from her rent for the next four months and \$61.32 from her fifth month's rent.

DH in unit 306 is entitled to recover \$375.05 from the landlord plus \$50.00 for the filing fee to the sum of **\$425.00**. The tenant is entitled to deduct \$100.00 from her rent for the next four months and \$25.00 from her fifth month's rent.

JR in unit 105 is entitled to recover \$682.96 from the landlord plus \$25.00 for the filing fee to the sum of **\$707.96**. The tenant is entitled to deduct \$125.00 from his rent for the next five months and \$82.96 from his sixth month's rent.

PD in unit 309 is entitled to recover \$655.23 plus \$25.00 filing fee to the sum of **\$680.23**. The tenant is entitled to deduct \$125.00 from her rent for the next five months and \$55.23 from her fifth month's rent.

JH in unit 302 is entitled to recover \$880.47 plus \$25.00 filing fee to the sum of **\$905.47**. The tenant is entitled to deduct \$150.00 from her rent for the next six months and \$5.47 from her sixth month's rent.

MD in unit 305 is entitled to recover \$466.34 plus \$25.00 filing fee to the sum of **\$491.34**. The tenant is entitled to deduct \$100.00 from her rent for the next four months and \$91.34 from her fifth month's rent.

As the tenants have not disclosed any parts of the *Act* that the landlords are now not complying with, this section of the tenants claim for an Order for the landlord to comply with the *Act* is dismissed.

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 27, 2012.

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Residential Tenancy Branch