



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes MNR, MND, MNDC, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for unpaid utilities, for carpet cleaning, compensation under the Act and the tenancy agreement, an order to retain a portion of the security deposit in satisfaction of the claim and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

### Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenant?

### Background and Evidence

The parties entered into a written, fixed term tenancy agreement on March 6, 2012. The initial term of the tenancy agreement was to be for one year from April 1, 2012 to March 31, 2013; however, in the fall of 2012 the parties entered into a written mutual agreement to end the tenancy effective on December 31, 2012.

The monthly rent was \$1,250.00 and the Tenant paid the Landlord a security deposit of \$625.00 at the outset of the tenancy.

A term of the tenancy agreement required the Tenant to pay the Landlord for propane used for a fireplace in the rental unit. Generally speaking, the terms were that at the outset of the tenancy the propane tank of 80 lbs would be filled and at the end of the tenancy the tank would be filled again and the difference would be calculated and the Tenant would pay for the propane used.

The Landlord is claiming the Tenant owes \$211.88 as her portion of the propane used. The Landlord has provided evidence that the propane tank was filled on March 14, 2012, prior to the start of the tenancy, and when a different renter was in occupation of the unit. The Landlord has discounted the amount requested from the Tenant to allow for use by the prior renter.

The Landlord submitted that on or about May 10, 2012, a next door neighbour to the rental unit informed the Landlord that he smelled a propane leak at the rental unit. According to the Landlord the neighbour informed her he had smelled the leak a day or two before, although he did not report it right away.

The Landlord called a company to attend the rental unit to repair the propane leak and the company provided an invoice for work completed on May 10, 2012. The parts repaired or replaced included a 48" hose and a gas regulator. The invoice sets out that there was, "gas leaking from gas tank" and "found leak at gas regulator vent and requires replacement".

According to the testimony of the Landlord, no measurement was done to determine the amount of propane left in the tank following the repairs of the gas leak.

The propane tank was then filled again on September 18, 2012, and the Landlord requested that the Tenant pay the sum of \$211.88 as her portion of the used propane. The Tenant objected to this sum feeling it was too much. It appears the ongoing dispute over the propane bill contributed to the tenancy ending early, with the mutual agreement of both parties, on December 31, 2012. The Landlord had

In evidence the Landlord has supplied an email from the service manager of the company who repaired the propane tank, dated October 29, 2012. The Landlord did not include her query to the service manager. The service manager writes, "With regards to the propane leak that you described, we estimate that the leakage was in the range of 1-2 liters per week."

The propane tank was filled again toward the end of the tenancy on December 26, 2012.

The Landlord explained that the propane tank is considered full when it registers 80% full, as this allows for expansion of the gas.

The Landlord testified that between the time of the September 18, 2012 propane fill and the fill of December 26, 2012, the tank went from 80% full to 75% full. Accordingly, the Landlord claims the Tenant owes her for the 5% used by the Tenant between September 18 and December 26, 2012, in the amount of \$15.96. I note that the Tenant agreed to pay this amount during the hearing.

The Landlord also testified that on the day she performed the outgoing condition inspection report her socks got wet from walking across the carpets. The Landlord alleges the Tenant failed to remove all the water from the carpet when she cleaned the carpets in the rental unit. The Landlord requests \$95.20 for carpet cleaning. In evidence the Landlord supplied an invoice from the carpet cleaning company. It has a note on it which states, "... "re-do" due to over-wetting".

In reply to the Landlord's claims, the Tenant testified that she is of the opinion that more propane leaked out of the tank than what the Landlord is allowing for.

The Tenant testified that her neighbour reported to her on May 7, 2012, that he could smell propane gas around the property. The Tenant testified she could not smell the propane but could hear the hissing when she was close to the tank. The Tenant testified she watched the neighbour use soapy water to test for leaks and she saw leaks around the regulator and a hose.

The Tenant testified that when she talked to the company that performed the repairs to the tank, they told her it was impossible to gauge how much gas leaked out. The Tenant testified that she recalls one of the technicians stating the tank was down to around 30% after the leak was fixed.

The Tenant further testified that she rented a carpet cleaner machine and used it to clean the carpets. She did not provide a receipt in evidence for the rental of the carpet cleaner.

### Analysis

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

The party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation 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.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In this instance, I find that the Landlord has proven that the Tenant did not pay for propane use at the rental unit for the time period of April 1 to September 17, 2012. It is a term of the tenancy agreement that the Tenant must pay for the use of propane. I find the Tenant has failed to pay for propane usage.

However, I find the Landlord has insufficient evidence to prove how much propane leaked out of the tank and how much the Tenant actually used. I do not find the Landlord has shown the Tenant owes \$211.88 for propane. Therefore, I find the Landlord has failed to prove the actual value of this loss.

The Landlord should have had the propane tank measured immediately following the repair of the leak. That is the only accurate way the amount of propane leaked would have been accounted for, in order to calculate the actual amount used by the Tenant. It is not fair, nor was it a term of the tenancy agreement, that the Tenant was to pay for any propane that leaked out of the tank. Rather, the Tenant was required to pay for what propane she used.

I do not accept the “estimate” provided by the service manager, as I am unable to determine what factors the Landlord asked this estimate to be based on. It appears any estimates from the company are based only on a leaking regulator; however, the evidence from the invoice and the Tenant support the fact that a 48” hose was replaced as well. I also note that it does not appear the service manager was the person who performed the actual repairs to the tank. Based on these reasons, I give little weight to the estimate in this email.

Based on the actual difference in propane measurements of the tank, I find that the Tenant used **\$15.96** worth of propane from September 18 to December 26, 2012, or 99 days. I note these are normally colder months in the usual course of a year. The Landlord is claiming the Tenant used \$211.88 of propane from April 1 to September 17, 2012, or 171 days. Again, I note these are generally speaking, the warmer months of the year. Based on a balance of probabilities, I find it unlikely that the Tenant used more propane in the spring and summer months than in the fall and winter months.

Based on \$15.96 in propane being actually used over 99 days by the Tenant, I calculate that the Tenant used approximately 16 cents worth of propane per day. As an estimate of the amount of propane used by the Tenant, I allow the Landlord 16 cents per day for the 171 days from April 1 to September 17, 2012, or a total of **\$27.36** for propane used during this time.

I accept the evidence of the Landlord in the form of the invoice from the carpet cleaning company, that the carpet was left wet at the end of the tenancy and water had to be removed. I find the Tenant owes the Landlord **\$95.20** for this.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director’s authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I find that the Landlord has established a total monetary claim of **\$188.52** comprised of \$27.36 for propane used from April 1 to September 17, \$15.96 for propane used from September 18 to December 26, 2012, \$95.20 for carpet cleaning, and the \$50.00 fee paid for this application.

I order that the Landlord may retain \$188.52 from the deposit in full satisfaction of the claim and I order the Landlord, under section 67, to return the balance due of **\$436.48 to the Tenant forthwith.**

I have granted and issued an order in favour of the Tenant, and the Tenant must serve the Landlord with a copy of this order. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

### Conclusion

The Landlord failed to prove the actual amount of propane used by the Tenant when there was a loss of propane that leaked from the tank.

The Landlord is granted an amount for propane, estimated from a measurement of the actual amount used by the Tenant for a certain period of time. The Landlord is also granted an amount for carpet cleaning and the filing fee for the Application.

The Landlord is ordered to return the balance of the security deposit to the Tenant immediately. The Tenant has an order which may be enforced in the Provincial Court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: April 4, 2013

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Residential Tenancy Branch