



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNR, MNSD, FF

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord for a Monetary Order for damage to the rental unit and unpaid rent or utilities, to keep all of the Tenants’ security deposit; and to recover the filing fee.

### Preliminary Issues

The Landlord named on the Application appeared for the hearing and provided affirmed testimony and written evidence prior to the hearing. The Landlord testified that she had served the Tenants with a copy of her Application and the Notice of Hearing documents personally to the Tenants on June 23, 2014 as well as by registered mail. The Landlord was unable to provide a copy of the Canada Post tracking number or tracking report but testified that the Tenants were aware of this hearing as they had met several times in the interim period to discuss a payment plan.

There was no appearance for the Tenants during the 30 minute duration of the hearing. However, based on the undisputed oral testimony of the Landlord, I accept that the Tenants were served with notice of this hearing pursuant to Section 89(1) (a) of the Act.

The Landlord explained that she is an agent working for the owner but is due to be leaving her role soon and wanted to amend her Application to include the name of the owner as the Applicant for the purposes of enforcing subsequent orders that may be issued as a result of this hearing.

Accordingly, I allowed the Landlord to amend her Application to include the owner’s name in the style of cause appearing on the front page of this decision as well as any orders issued, pursuant to Section 64(3) (c) of the Act.

During the hearing, the Landlord also withdrew her claim for a Monetary Order for damages to the rental suite to reconsider this portion of the claim, and to keep the Tenants' security deposit as the Tenants had not yet provided her with a forwarding address in writing.

Accordingly, I dismissed these portions of the Landlord's Application with leave to re-apply and focused my attention on the Landlord's monetary claim for unpaid rent and utilities.

#### Issue(s) to be Decided

- Are the Landlords entitled to unpaid rent for April and May, 2014?
- Are the Landlords entitled to unpaid electricity costs for the duration of the tenancy?

#### Background and Evidence

The Landlord provided a written tenancy agreement and testified that the tenancy began on November 1, 2013 and was for a fixed term of six months due to end on June 1, **2014**, even though the tenancy agreement shows that the end date was June 1, **2013**, which the Landlord testified was a clerical error.

Rent under the tenancy agreement was payable by the Tenants in the amount of \$700.00 on the first day of each month. The Tenants paid the Landlord a security deposit of \$350.00 at the start of the tenancy which the Landlord still retains.

The Landlord completed a move in Condition Inspection Report (the "CIR") at the start of the tenancy with the Tenants. A move out CIR was completed in April, 2014 in the absence of the Tenants as they had abandoned the rental suite.

The Landlord explained that under the tenancy agreement, the Tenants were required to put utilities into their name and pay the bills accordingly. The written tenancy agreement shows that electricity is not included in the rent.

The Landlord testified that in April, 2014 she visited the rental suite to collect rent, only to find that there was no sign of the Tenants. However, the rental unit still contained all of the Tenants' personal property. The Landlord testified that she called the Tenants who explained that they were no longer residing in the rental suite and were now living in another city.

The Landlord testified that she was reluctant to take possession of the rental unit and change the locks because the Tenants had all their furniture, including beds and couches, as well as the Tenants' daughter's toys.

The Landlord explained that she gave the Tenants two opportunities during the month of April, 2014 to come back to collect their belongings as she felt sorry that she would have to dispose of the Tenants' daughter's belongings. However, on both occasions the Tenants failed to collect their belongings.

The Landlord explained that in May, 2014 she spent the first two weeks cleaning the rental suite of the Tenants' personally belongings which required numerous dump runs as well as rectifying damage to the rental unit. The Landlord testified that she had to have several doors of the rental unit repaired as they had been kicked in and damaged by the Tenants which was documented on the CIR. The Landlord testified that one of the bedrooms had a large amount of cat feces which had to be disposed of and sanitized.

As a result, the Landlord claims for two months of rent which she lost as a result of the Tenant's not honoring the fixed term tenancy, for not giving any written notice that they were leaving the tenancy, for the opportunities she provided to the Tenants to collect their personal belongings rather than have them disposed of, and for the damage that the Landlord had to rectify.

In support of the unpaid electricity costs, the Landlord provided a copy of the bill and testified that the amount of the bill included the period of the tenancy from the start to March, 2014 in the amount of \$987.78 and that this amount accounted for a credit that had been applied from the previous account of the Landlord and therefore it was still a reduced amount that was being claimed.

### Analysis

Section 26(1) of the Act states that a Tenant must pay rent when it is due under the tenancy agreement.

Section 37(2) of the Act requires a Tenant to leave a rental suite reasonably clean and undamaged at the end the tenancy. In addition, Section 21 of the Residential Tenancy Regulation states that a CIR can be used as evidence of the state of repair and condition of the rental suite, unless a party has a preponderance of evidence to the contrary.

Pursuant to Section 45(2) of the Act, a Tenant cannot end a fixed term tenancy unless the Landlord has failed to comply and rectify a material breach of the tenancy.

Based on the above provisions of the Act, I find that the Tenants abandoned the rental suite in April, 2014 without cause and provided no evidence or authority under the Act to prove they had grounds to leave the tenancy. Therefore, I find that the Tenants are liable for April, 2014 rent in the amount of \$700.00.

I also accept the Landlord's undisputed testimony, along with the CIR which supports the damages to the rental suite that the Landlord was unable to rent out the suite for May, 2014 and as a result, the Landlord is awarded lost rent for May, 2014 which was also the last month of the fixed term tenancy.

I also find that the Tenant failed to pay the electricity bills as required by the written tenancy agreement and I accept the Landlord's testimony and copy of the utility bill that \$987.78 is outstanding for the time the Tenants were occupying the rental unit. As a result, the total amount awarded to the Landlord is **\$2,387.78**.

As the Landlords have been successful in this matter, the Landlords are also entitled to recover from the Tenants the **\$50.00** filing fee for the cost of this Application. Therefore, the total amount awarded to the Landlords is **\$2,437.78**.

### Conclusion

For the reasons set out above, I grant the Landlords a Monetary Order pursuant to Section 67 of the Act in the amount of \$2,437.78. This order must be served on the Tenants and may then be filed in the Provincial Court (Small Claims).

The Landlords' Application for a Monetary Order for damages to the rental unit and to keep the Tenants' security deposit is dismissed **with** leave to re-apply.

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: October 24, 2014

