



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      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 Landlords for unpaid utilities, to keep the Tenants’ security deposit, and to recover the filing fee from the Tenants.

Both Landlords appeared for the hearing and provided affirmed testimony as well as documentary evidence prior to the hearing. However, there was no appearance by the Tenants during the 20 minute duration of the hearing or any submission of written evidence prior to the hearing. As a result, I turned my mind to the service of the documents by the Landlords for this hearing.

The Landlords explained that after this tenancy ended, the Tenants orally provided them with a forwarding address for each of them. As a result, the Landlords registered mailed a copy of the Application and the Notice of Hearing documents to each Tenant on December 10, 2014 to their respective forwarding addresses that had been provided to them. The Landlords provided a copy of each Canada Post tracking number as evidence for this method of service.

Section 90 of the Act states that documents served by mail are deemed to have been received five days after they are mailed. A party cannot avoid service by a failure or neglect to pick up mail and this reason alone cannot be used to make a review application. Based on Landlords’ testimony and registered mail evidence, I find the Landlords served the Tenants in accordance with Section 89(1) (c) of the *Residential Tenancy Act* (the “Act”) and these are deemed to have been received by the Tenants on December 15, 2014.

The Landlords explained that they only sought in this hearing to keep the Tenants’ security deposit in the amount of \$500.00 and withdrew any remaining amounts that may be awarded to them including the filing fee. As a result, I continued to hear the Landlords’ evidence in relation to their claim to keep the Tenants’ security deposit.

Issue(s) to be Decided

- Are the Landlords entitled to keep the Tenants' security deposit in full satisfaction of a monetary claim for unpaid utilities?

Background and Evidence

The Landlord testified that this tenancy started on August 1, 2014 on a month to month basis and finished on November 30, 2014. Rent in the amount of \$1,000.00 was payable on the first day of each month. The Tenants paid the Landlords a \$500.00 security deposit at the start of the tenancy which the Landlords still retain.

The Landlords provided a copy of the tenancy agreement which contains an attached document that requires the Tenants to pay "all Utilities with the exception of Water". The Landlords testified that shortly after the tenancy ended it came to their attention that the Tenants had failed to pay their electrical utility bill in the amount of \$492.11. A copy of this bill was provided into written evidence.

The Landlords testified that they presented this bill to the Tenants after the tenancy had ended but the Tenants refused to pay it until they had received their security deposit back from them. As a result, the Landlords now apply to recover the unpaid utility bill cost as it is still remains unpaid.

Analysis

There is no evidence before me that suggests the Tenants provided the Landlords with a forwarding address **in writing**. Therefore, the time limits imposed by Section 38(1) of the Act in relation to the return of the Tenants' security deposit do not apply in this case.

I have examined the written tenancy agreement signed by the parties for this tenancy and I find that there was a requirement for the Tenants to pay electrical utilities for this tenancy. I accept the Landlords' oral and documentary evidence that the Tenants failed to pay the utility bill amount of \$492.11 at the end of the tenancy for which they were responsible for. Therefore, the Landlord is awarded this cost in the amount of \$492.11.

As the Landlords have been successful in this matter, they are awarded the filing fee in the amount of \$50.00 pursuant to Section 72(1) of the Act. Therefore, the total amount the Landlords would be entitled to would be \$542.11.

The Landlords confirmed during the hearing that they only wanted to keep the Tenants' security deposit in full satisfaction of an award granted to them. Therefore, I order the Landlords to keep the Tenants' security deposit in the amount of \$500.00 in full satisfaction of their Application.

Conclusion

The Tenants failed to pay utilities. The Landlords may keep the Tenants' security deposit of \$500.00. The remainder of the Landlords' award was abandoned.

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: July 15, 2015

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Residential Tenancy Branch

