



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HOMELIFE PENINSULA PROPERTY MANAGEMENT COMPANY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes: MNDC OLC FF

### **Introduction:**

Both parties attended and agreed the tenant served the Application for Dispute Resolution by registered mail. This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order or rent rebate pursuant to Sections 1, 7, 67 and Policy Guideline 1 for hydro charged to them for another tenant's unit,
- b) To order the landlord to obey the Act and provide separate meters or other means of fair apportionment of hydro; and
- c) An order to recover the filing fee pursuant to Section 72.

### **Issue(s) to be Decided:**

Has the tenant proved on the balance of probabilities that they are being required to pay the hydro costs for another tenant's unit? If so, to how much reimbursement and other remedies have they proved entitlement?

### **Background and Evidence:**

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced September 1, 2015, that monthly rent is \$2000 and a security deposit of \$1000 was paid. The tenants said they discovered that they were being billed for hydro for another unit as well as their own.

The parties agree the premises are a 2100 sq. ft. home (including basement); there is a separate 500 sq. ft. coach house which is rented for \$800 a month including utilities. The tenants in the home received bills for hydro for both the home and coach house and paid them as they did not know they were paying the hydro for the coach house as well. Their bills showed such an increase that they made enquiries and found out they were required to pay utilities for both. They requested reimbursement of \$179.25 on their Application but in their evidence, they provided evidence of a further hydro bill for January 25, 2016 and increased their claim to \$469.95. They believe they should be

reimbursed for 50% of each hydro bill as the tenants in the coach house live a different lifestyle which involves leaving their windows open in winter. The coach house is heated by hydro and the main house by gas. The landlord said they did not receive the increased claim.

The landlord said they manage several similar properties in the area and acknowledged the hydro costs are high. They provided evidence that the tenants of the main homes are reimbursed 25% of their hydro bills to compensate them for the costs of the coach house hydro. None of these other homes have separate meters or monitor the hydro use of each unit separately. The landlord said it would be very expensive to install a separate meter or monitoring system. The tenant said they had done research and a monitoring system costs about \$400 plus the cost of an electrician to install it on the lines.

In evidence are hydro bills and a detailed analysis of the costs. The tenant showed the cost increase in the hydro bills before the coach house was occupied and after. The landlord did not disagree or point out flaws in the tenant's analysis. The landlord included some hydro bills of other similar properties with the landlord reimbursing at 25%. On the basis of the documentary and solemnly sworn evidence, a decision has been reached.

### **Analysis**

Awards for compensation are provided 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.

### **Director's orders: compensation for damage or loss**

**67** Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], 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.

Section 67 of the Act does *not* give the director the authority to order a respondent to pay compensation to the applicant if damage or loss is not the result of the respondent's non-compliance with the Act, the regulations or a tenancy agreement.

I find Policy Guideline 1 of the Residential Policy Guideline provides that a tenancy agreement which requires a tenant to put the electricity or other utility billing in his or her name for a premise that the tenant does not occupy is likely to be found unconscionable as defined in the Regulations. Furthermore, it states that if the tenants under the different tenancy agreement do not pay their share, the tenant whose name is on the bill may claim against the landlord for the other tenants' share of the unpaid utility bills.

Policy Guideline 8 provides that a term of a tenancy agreement is unconscionable or grossly unfair to one party...A term may be found to be unconscionable when one party took advantage of the ignorance, need or distress of the weaker party.

I find the landlord did not include the term requiring the tenant of the main house to pay the hydro bills for the coach house and the weight of the evidence is that they did not even inform the tenants. The tenants' evidence is supported by emails between the parties. I find they took advantage of the tenants' ignorance and expected them to pay the hydro bill for the coach house which was included in their bill for the main house. When the tenants discovered this through enquiry, the landlord stated they got cheaper rent because of this. However, there was no provision stating this in their lease.

Although the landlord contended 25% reimbursement should be sufficient based on the split in other similar properties they manage, I find the landlord was basing this on square footage of the coach and main house. I find each situation is different. I find the coach house has similar appliances to the main house and their sole source of heat is hydro whereas the main house has a separate gas bill for their heating. I find the tenants evidence credible that the coach house tenants leave windows open in winter and this dramatically increases heating costs. Therefore, I find a split in hydro based on square footage not to be equitable to the tenants of the main house. I find the very detailed breakdown of costs by the tenants to be credible as it is based on hydro bills calculated when the coach house is empty and when it is tenanted. I find the tenants entitled to recover \$23.31 of the bill for September 24, 2015 (based on 20% of bill for no heat was being used), \$155.94 for November 25, 2015 and \$290.70 for January 2016.

Based on the calculations and bill for November 23, 2015, I find the average daily kWh for 30 days before tenants occupied the suite was 34.66 kWh and for the 32 days after occupancy was 79.38 kWh. As the hydro use almost doubled after coach house occupancy and the hydro was being used for the coach house heat plus other appliances, I find it reasonable that the tenants are entitled to be reimbursed for 50% of their hydro bill by the landlord. I find them entitled to be reimbursed \$469.95 up to the bill for January 25, 2016.

Although the landlord contended they had not received the updated claim for January 2016, I find based on the weight of the evidence to November 25, 2015, I would have ordered the landlord to reimburse the tenants for 50% of their hydro bill and the hydro bill for January 25, 2016 was \$581.41.

As the division of hydro is an ongoing dispute with the tenants and the landlord, I will order the landlord to install separate meters, a monitoring system or some other device to satisfactorily measure the usage of hydro of the coach house and main house to determine the split for fair reimbursement to the main house tenants. In the alternative, the parties may agree by mutual signed agreement to a mutually satisfactory split.

**Conclusion:**

I find the tenants entitled to a monetary order as calculated below and to recover filing fees paid for this application.

**Calculation of Monetary Award:**

Reimbursement for hydro use by coach house	
September 2015	23.31
November 2015	155.94
January 2016	290.70
Filing fee (filed Jan. 5, 2016)	50.00
Total Monetary Order to Tenant	519.95

**I HEREBY ORDER that the tenants are entitled to 50% reimbursement from the landlord of their hydro bills until the landlord installs separate meters, a monitoring system or other device to measure a fair split for hydro reimbursement. In the alternative, the parties may sign a mutually satisfactory agreement.**

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: March 09, 2016

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Residential Tenancy Branch

