



# Dispute Resolution Services

Page: 1

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 concerning an application made by the landlords seeking a monetary order for unpaid rent or utilities, for an order permitting the landlords to keep all or part of the pet damage deposit or security deposit, and to recover the filing fee from the tenants for the cost of the application.

One of the landlords and both tenants attended the hearing, and the landlord also represented the second named landlord. Each party gave affirmed testimony, and were given the opportunity to question each other.

On August 23, 2016 the tenants provided evidentiary material to the Residential Tenancy Branch, but not within the time required by the Rules of Procedure, and did not provide a copy to the landlords. The Rules of Procedure require a Respondent to provide to the Residential Tenancy Branch and to the Applicant copies of all evidentiary material at least 7 days before the hearing date. The landlord opposed an adjournment to allow copies to be provided, and advised that the tenants were served with the application and notice of this hearing, along with the landlords' evidentiary material on April 12, 2016. In the circumstances I found that it would be prejudicial to the landlord to adjourn the hearing. The evidentiary material of the tenants is not considered in this Decision, but the evidentiary material of the landlords is considered in this Decision.

No other issues with respect to service or delivery of documents or evidence were raised.

### Issue(s) to be Decided

- Have the landlords established a monetary claim as against the tenants for unpaid utilities?
- Should the landlords be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

### Background and Evidence

**The landlord** testified that this fixed-term tenancy began on June 1, 2015 and was to expire on May 31, 2016, however the parties agreed to end the tenancy effective March 31, 2016. Rent in the amount of \$1,800.00 per month was payable on the 1<sup>st</sup> day of each month and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$1,000.00 which is still held in trust by the landlords, and no pet damage deposit was collected. The rental unit is a single family dwelling house, and a copy of the tenancy agreement has been provided.

The landlord further testified that water is included in the rent, but no other utilities are. The tenants have not paid the final hydro bill in the amount of \$448.53, and the landlords have provided a copy of the bill. The landlord testified that there are 2 houses on the property, one of which the landlords reside in. A master hydro meter records all of the electrical consumption for both houses. A secondary meter records only the usage for the rental unit. If there is only 1 meter for each home, the landlords would have to get another pole and have individual meters and wiring at some cost to the landlords. The secondary meter was installed by BC Hydro and was sealed by BC Hydro.

The landlord mentioned to the tenants a couple of times during the tenancy that leaving the outside lights on during the day, of which there are 9, would consume more hydro than necessary. Further, the landlords' residence has a wood burning insert and a heat pump which the landlord believes reduces the landlords' hydro consumption, and the tenants' share of the bill is higher.

The landlords calculate the consumption of the tenants in the rental unit by reading both meters on the 19<sup>th</sup> day of each month to match BC Hydro's billing period. The readings give the total amount of electricity used, then the landlords calculate the kilowatt hours used by rental unit, giving a percentage of total electricity used. The landlords only get 1 bill from BC Hydro every 2 months, and copies of 2 bills have been provided. The first is for the period of November 20, 2015 to January 19, 2016 totaling \$1,030.55. The second bill is dated March 22, 2016 totaling \$763.77. The landlords have also provided a copy of a statement given to the tenants showing the calculation. It shows the 2 house numbers, the reading for the master and the secondary meters on November 20 and January 20. The tenants' share of the final bill is \$448.33.

The landlords offered to return the remaining portion of the security deposit during the move-out condition inspection, but the tenants disagreed, offering to pay to the landlords the sum of \$250.00 of that security deposit. The parties came to an impasse, and the landlords claim \$448.33, in addition to the \$100.00 filing fee.

**The first tenant** testified that the tenants questioned a few of the hydro bills because they were so high. The tenants knew that electric heat would be a bit more expensive than the tenants paid in the past, but after the first \$600.00 bill, the tenants have tried to not use the electric heat and only use it to take the chill off. The tenant cannot fathom the power consumption, and a machine shop in which he works using welders and other equipment all day uses less power than the rental unit.

The tenant called BC Hydro who knows nothing about the second residence or a secondary meter, and the tenant didn't know about the secondary meter until about a month into the tenancy. The

meter is not sealed, and the tenant has taken time-stamped photographs of it. According to the electrician's code book, each residence has to have its own meter, and the tenant questions the legality of re-selling power.

The tenant agrees that some amount should be awarded to the landlords, and agrees to pay \$300.00, but not the \$448.33 claimed.

**The second tenant** testified that when the tenants received a \$600.00 bill the tenant questioned it. The landlord gave the tenants copies of bills from 3 years previous. The tenants cut their consumption to nothing, and lived in a freezing house. It was not often that the outside lights were left on. The landlord commented while in the rental unit for showings that the house could have been warmer, and the tenant's partner replied that that's how it always is.

The tenants realized that the heating was not efficient for the rental unit, but the landlord told the tenants how he calculated their share, but 60% is not an accurate claim. The landlord has no proof of the consumption in the rental unit or the readings, and it was significantly warmer from January to March this year.

The tenant agrees that some amount is owed to the landlord and agrees that the tenants should pay no more than \$300.00, and the tenants should recover the balance of the security deposit.

### Analysis

I have reviewed the evidentiary material of the landlord, and firstly dealing with the tenancy agreement, a landlord may not accept or collect more than half a month's rent as a security deposit, and a half a month's rent for a pet damage deposit, if that applies. If a landlord collects more than half a month's rent, the tenant may reduce rent by the overpayment. Further, the tenancy agreement states that late rent is subject to a late payment charge of \$50.00, and N.S.F. cheques may be subject to a charge of \$36.00. The regulations specify no more than \$25.00 for a late fee and only if it is contained in the tenancy agreement. N.S.F. cheques can be subject to what the landlord was charged by the financial institution. The landlords have not claimed a late rent fee or an N.S.F. fee, and I mention them for future tenancies. However, in this case the landlords have sought an order permitting them to keep a portion of the security deposit, and I find that the tenants are already entitled to recovery of \$100.00 having paid that much in excess of what the landlords were entitled to collect.

I have also reviewed the statement showing the readings as taken by the landlords. The tenants question the accuracy of them, but have not provided any information about keeping track of the readings themselves. The tenants lived in the rental unit for 10 months, and the first tenant testified that he didn't know there was a secondary meter until about a month into the tenancy. Had the tenants read the meter and kept track, the tenants would be in a better position to dispute the landlords' readings. The landlords have provided evidence of how the hydro was calculated and the landlord testified that the readings were taken every month. I have no reason to disbelieve that testimony. I have also reviewed the hydro bills, re-checked

the mathematics, and I am satisfied that the landlords have established that the readings are accurate and the tenants are indebted to the landlords the sum of \$448.33.

Since the landlords have been successful with the application, the landlords are also entitled to recovery of the \$100.00 filing fee.

The Residential Tenancy Policy Guidelines refer to security deposit and set-off, and specifies that an Arbitrator will award to a tenant return of all or part of the deposit(s) either on a tenant's application for return of a security deposit or on a landlord's application to keep it. I hereby order the landlords to retain \$548.33 of the security deposit, and I grant a monetary order in favour of the tenants as against the landlords the difference in the amount of \$451.67.

### Conclusion

For the reasons set out above, I order the landlords to keep \$548.33 of the security deposit, and I grant a monetary order in favour of the tenants as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$451.67.

This order is final and binding and may be enforced.

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 24, 2016

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Residential Tenancy Branch