



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

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

## **DECISION**

Dispute Codes      MNR, MND, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for unpaid utilities, for damages to the unit, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee from the tenants.

The landlord and tenant HB attended. As the tenant MB did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered. The Residential Tenancy Branch Rules of Procedure states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord's agent testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on February 3, 2016, a Canada post tracking number was provided as evidence of service, the tenant MB did not appear.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenant MB has been duly served in accordance with the Act.

Both landlord and tenant HB appeared, gave 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 at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

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

### Issues to be Decided

Is the landlord entitled to a monetary order for unpaid utilities?

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

### Background and Evidence

The tenancy began on December 15, 2013. Rent in the amount of \$2,000.00 was payable on the first of each month. A security deposit of \$1,000.00 was paid by the tenants. The tenancy ended on January 16, 2016. Filed in evidence is a copy of the tenancy agreement.

At the outset of the hearing the landlord's agent indicated that they wish to amend their application by reducing the items claimed.

The landlord claims as follows:

a.	Unpaid utilities	\$ 970.00
b.	Removal of the stove	\$ 105.00
c.	Late fees and NSF fees	\$ 100.00
d..	Filing fee	\$ 100.00
	<b>Total claimed</b>	<b>\$1,275.00</b>

### Unpaid utilities

The landlord's agent testified that water was not included in rent. The agent stated that the tenant never lived in the rental unit as they were subletting the premises. The agent stated that they would forward the utility invoices to the rental unit; however, the utility was never paid. The agent stated that they seek to recover unpaid water in the total amount of \$970.20.

The tenant testified that they do not deny water was not included in rent. The tenant stated that they never received any invoices for unpaid utilities from the landlord. The tenant stated that they always received any mail that was sent to the rental unit. The tenant stated that the landlord should have dealt with the issue of unpaid water earlier.

### Removal of the stove

The landlord's agent testified that the tenant had created a secondary rental unit in the basement. The agent stated that the tenant was informed that they were required to remove the secondary stove in order to comply with the municipal codes. The agent stated that since the tenant did not comply with their notice to remove the stove, it was removed by the landlord on January 8, 2016.

The tenant testified that they were told by the original agent that it was okay to create a secondary unit and add a stove. The tenant stated that the landlord had seen the stove many times over the tenancy. The tenant stated that landlord removed the stove before they had an opportunity to remove it.

### Late fees and NSF fees

The tenant acknowledged that they are responsible for the late fees and the NSF fees.

### Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

### Unpaid utilities

I am satisfied based on the written tenancy agreement that the tenant was required to pay for the water utilities. In this case the tenant was subletting the rental unit. The evidence of the landlord's agent was that copies of the invoices were sent to the rental unit. The evidence of the tenant was that they did not receive the invoice.

Even, if I accept the tenants did not receive the copies of the invoices, it was the tenants' responsible to pay the water utilities under the tenancy agreement. I find the tenants have breached the tenancy agreement when they failed to pay the utilities and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover unpaid utilities in the amount of **\$970.00**.

### Removal of the stove

Although I accept the basement unit was in violation of the municipal code by having a stove; however, I am not satisfied that the landlord had the authority to remove the tenant's personal belongings.

Under section 47 of the Act a landlord can end a tenancy for cause, for failing to comply with a government order, such as removing the stove in the secondary unit. I am not satisfied that the landlord has proven a violation of the Act by the tenants. Therefore, I dismiss this portion of the landlord's claim.

Late fees and NSF fees

The tenant acknowledged that they are responsible for these fees. Therefore, I find the landlord is entitled to recover the fees in the total amount of **\$100.00**.

I find that the landlord has established a total monetary claim of **\$1,170.00** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit and interest of **\$1,000.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$170.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenant

Conclusion

The landlord is granted a monetary and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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: September 17, 2016

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Residential Tenancy Branch