



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC RR FF

### Introduction

This hearing was convened as a result of the tenant's application for dispute resolution under the *Residential Tenancy Act* (the "Act") for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for a rent reduction for repairs, services or facilities agreed upon but not provided, and to recover the cost of the filing fee.

The tenant and the landlord attended the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

The landlord confirmed that she received and had the opportunity to review the tenant's documentary evidence prior to the hearing. The tenant testified that he did not check his mail so was deemed served with the landlord's documentary evidence as I find that failure or neglect to check for mailed evidence is the responsibility of the tenant.

### Preliminary and Procedural Matter

As the tenancy has ended, I find that the tenant's claim for a rent reduction in addition to a monetary order for money order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, are related to the same items and as a result, I will only be dealing with the tenant's application for a monetary order for damage or loss under the *Act*, regulation or tenancy agreement.

### Issue to be Decided

- Is the tenant entitled to a monetary order under the *Act*, and if so, in what amount?

### Background and Evidence

A copy of a portion of the tenancy agreement was submitted in evidence. The parties agreed that a monthly tenancy began on June 13, 2016. The tenancy has ended as the tenant has vacated the rental unit.

The tenant's monetary claim of \$110.00 is comprised as follows:

| ITEM DESCRIPTION                           | AMOUNT CLAIMED  |
|--|-----------------|
| 1. Data usage (due to wifi being shut off) | \$60.00         |
| 2. Power and water charge                  | \$50.00         |
| <b>TOTAL</b>                               | <b>\$110.00</b> |

Regarding item 1, the tenant claims that he spent \$60.00 in data charges for his cell phone due to the landlord shutting off his Wi-Fi. The tenant did not provide any receipts for this portion of his monetary claim. The tenant also did not submit any documentary evidence to support the data usage he was claiming for. The parties disputed whether wifi was included in the tenancy agreement. The tenancy agreement indicates "WIFI + sewer hook up" under the section entitled "What is included in the rent".

Regarding item 2, the landlord admitted to shutting off the tenant's power and water and as a result of the landlord's breach of the *Act*, the tenant is awarded his full cost of \$50.00 as claimed as the landlord is not permitted to shut off the tenant's water and power under the *Act*. The tenant stated that he was forced to use solar power and had to purchase water due to the landlord shutting off his power and water.

### Analysis

Based on the evidence presented and the testimony of the parties provided during the hearing, and on the balance of probabilities, I find the following.

#### *Test for damages or loss*

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. 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 what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the landlord. Once that has been established, the tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the tenant did what was reasonable to minimize the damage or losses that were incurred.

**Item 1** – Regarding item 1, while I find that Wi-Fi was included in the rent, I find the tenant did not meet part three of the test for damages or loss by proving the value of the data charges he is claiming for. The tenant failed to submit a receipt or other documents to support the value. Therefore, **I dismiss** this portion of the tenant's claim due to insufficient evidence.

**Item 2** - Regarding item 2, the landlord admitted to shutting off the tenant's power and water which I find breaches section 27 of the *Act*. Section 27 of the *Act* applies which states:

**Terminating or restricting services or facilities**

**27 (1) A landlord must not terminate or restrict a service or facility if**

(a) **the service or facility is essential to the tenant's use of the rental unit as living accommodation, or**

(b) **providing the service or facility is a material term of the tenancy agreement.**

[my emphasis added]

Based on the above, as power and water are essential to the tenant's use of the rental unit, I find the landlord owes the tenant the full amount of his claim for this portion of this claim in the amount of **\$50.00**.

**I CAUTION AND ORDER** the landlord to not breach section 27 of the *Act* in the future by terminating power or water to a rental unit. Failure to do so could lead to a

recommendation for an administrative penalty under the *Act*. The maximum penalty for an administrative penalty under section 94.2 of the *Act* is \$5,000.00 per day and may be imposed for each day the contravention or failure continues.

As the tenant's application had merit, I grant the tenant the recovery of the cost of the filing fee in the amount of **\$100.00**.

I find the tenant has established a total monetary claim of **\$150.00** comprised of \$50.00 for item 2, plus the recovery of the cost of the filing fee in the amount of \$100.00. I grant the tenant a monetary order pursuant to section 67 of the *Act* for the amount owing by the landlord to the tenant in the amount of \$150.00.

### Conclusion

The tenant's application was partially successful.

The tenant has been granted a monetary order pursuant to section 67 of the *Act*, for the amount owing by the landlord to the tenant in the amount of \$150.00. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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, 2016

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Residential Tenancy Branch

