



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, FF, O

### Introduction

These hearings were convened by way of conference call concerning an Application for Dispute Resolution (the “Application”) made by the Tenants on January 14, 2016 for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”), regulation, or tenancy agreement; to recover the filing fee from the Landlords; and for “Other” non-disclosed issues.

The male Tenant and the Landlord appeared for the hearing on September 6, 2016 and provided affirmed testimony. The Landlord confirmed receipt of the Tenants’ Application and the parties confirmed receipt of each other’s documentary evidence which was served prior to the hearing.

The first hearing was adjourned as the time limit allowed for the hearing had been exceeded. The parties were sent an Interim Decision dated September 6, 2016 which required them to submit additional evidence and requested the female Tenant to appear for the reconvened hearing.

Both Tenants and the Landlord appeared for the reconvened hearing and provided affirmed testimony. At the reconvened hearing, the parties confirmed receipt of the additional evidence that was requested in my Interim Decision. During the hearings, the process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party on the evidence provided.

### Issue(s) to be Decided

Are the Tenants entitled to monetary compensation for loss under the Act, regulation or tenancy agreement?

### Background and Evidence

The parties agreed that this tenancy for the upstairs portion of the rental home started on May 12, 2014 for a fixed term of one year which then continued on a month to month basis. A written tenancy agreement was entered into and provided into evidence. The written agreement required the Tenants to pay rent in the amount of \$900.00 on the first day of each month. The agreement did not include utilities and the Tenants were required to put utilities in their name for the entire rental home which included utilities for the basement portion of the rental home.

The Tenant testified that the tenancy ended on January 31, 2016 after they gave written notice to end the tenancy. However, after they vacated the rental unit, the Tenants learnt that the Landlords should not have made them pay for the utilities used by the basement renters. As a result, the Tenants calculated that as their rental unit comprised of half of the space of the rental home they should have only paid for half of the gas and hydro they had used during the tenancy. The Tenants provided their utility bills into evidence which consist of \$2,972.00 for hydro and \$1,600.00 for propane, for a total of \$4,572.00. As a result the Tenants now claim 50% of these amounts of \$2,286.01 being the amount they paid for the basement renters use of utilities during their tenancy.

The Landlord disputed the Tenants' claim and stated that before the Tenants took on this tenancy the previous tenants were paying a much higher rent of \$1,150.00 which was inclusive of utilities. However, in an effort to motivate potential new renters to converse utilities, the Landlords decided to lower the rent and make tenants pay for utilities. As a result, the Landlords advertised the rental unit for rent exclusive of the utilities.

The Landlord testified and confirmed in their written evidence that the rental unit was advertised for \$975.00 per month with two thirds payment of the utilities. The Landlord explained that part of this deal required the Tenants to obtain the remaining third of the utility payment each month from the basement renters. However, after the Tenants expressed reluctance about having to collect monies from the basement renters, the Landlord testified that the parties negotiated that the rent would be reduced to \$900.00 and that the extra \$75.00 would then be considered to be the basement renter's portion of the utilities. The Landlord confirmed that no monies were physically exchanged but it was assumed that this deal effectively provided the Tenants with a rent reduction in exchange for paying the basement renter's portion of the utilities by paying for the utilities of the entire rental home. The tenancy agreement was then signed after these negotiations.

The female Tenant denied that any negotiations occurred between her and the Landlord which included a rent reduction for the Tenants having to pay utilities for the entire home. The Tenants pointed to the advertisement for the rental unit they had provided which shows that it was advertised for \$900.00 exclusive of utilities which was contrary to the Landlord's testimony.

The Landlord responded stating that the tenancy started a while ago and he had got confused in his memory of what the rental unit had been advertised for. However, the Landlord re-iterated that the Tenants were presented with several options which all sought to reduce rent based on the amount of utilities the Tenants wanted to pay.

The Landlord disputed the Tenants' claim amount stating that the basement portion of the rental home was one third in size as parts of it were shared, such as the laundry room, and other parts were the mechanical room which used little utilities to heat and cool it. The Landlord testified that the basement rental unit was unoccupied for two months in between renters for which the Tenants paid no utilities for those months. The Landlord testified that the Tenants failed to pay utilities in the amount of \$143.40 for the last two weeks of the tenancy as they shut down the utilities prematurely.

The Landlord argued that the Tenants had made no mention of this issue during the tenancy and chose only to deal with the issue after the tenancy had finished. The Landlord stated that the Tenants were getting an honest and fair deal which is the reason why they did not complain about the amounts they were paying during the tenancy.

The Landlord also argued that the hydro rates had gone up during the length of the tenancy and that the Landlords should not be accountable for the utility rates the Tenants used to calculate their monetary claim. The Landlord asserted that the Tenants were provided with an estimate of utility usage based on usage by the previous renters of the rental unit who worked away from the rental unit and had no kids. The Landlord submitted that the energy costs being claimed by the Tenants were very high because the female Tenant had two small children and was a stay at home mother resulting in an increased amount of utility usage by them. The Landlord concluded that the Tenants were attempting to retroactively negotiate the terms and conditions of their tenancy agreement; terms which they had already agreed to at the start of the tenancy.

The Landlord disputed that he should have to pay any of the utility costs to the Tenants. The Landlord asserted that the Tenants' claim was flawed because the basement unit is a lot smaller and was occupied by less renters than the Tenants, which meant that the basement renters would have used much less utilities than the Tenants did. The

Landlord provided into evidence a breakdown of the square footage of the rental unit and the basement portion into evidence. This consisted of several schematic diagrams showing the square footage. The Landlord calculated and concluded that the square footage of the rental unit was 1,295 square feet and that the basement portion was 510 square feet.

The Tenants did not dispute the Landlord's evidence with respect to the square feet calculations he had conducted and agreed that they had closed their utility account prematurely and owed the Landlord \$143.40 in utilities for the last two weeks of the tenancy. The Tenants submitted that based on the Landlord's calculations they should be entitled to 39% of the utility bills they paid rather than the 50% they claimed.

### Analysis

In conducting my analysis of the evidence before me in this case, I first turned to Section 6(c) of the Act which states that a term of a tenancy agreement is not enforceable if the term is inconsistent with the Act or the regulations or the term is unconscionable. Policy Guideline 8 states in part:

*"Under the Residential Tenancy Act and the Manufactured Home Park Tenancy Act, a term of a tenancy agreement is unconscionable if the term is oppressive or grossly unfair to one party. Terms that are unconscionable are not enforceable. Whether a term is unconscionable depends upon a variety of factors. A test for determining unconscionability is whether the term is so one-sided as to oppress or unfairly surprise the other party."*

[Reproduced as written]

Policy Guideline 1 to the Act under the heading of "Shared Utility Service" states:

*"A term in a tenancy agreement which requires a tenant to put the electricity, gas or other utility billing in his or her name for premises that the tenant does not occupy, is likely to be found unconscionable as defined in the Regulations."*

[Reproduced as written]

I concur with the above policies and find they are relevant to the issues before me.

Based on the foregoing, I find the Landlord's request for the Tenants to put the utilities for the entire rental property into their name and to pay the full costs of those utilities throughout the tenancy was unconscionable.

I make this finding because the Tenants would not have had any control over how much utilities the basement occupants would use and had no ability to enforce anything

against the other occupants if disputes around usage arose. In this respect, I find the Landlord put the Tenants and the basement renters into a situation for potential disputes and therefore this was unfair and oppressive to the Tenants. The Landlord argued that the basement renters were less in numbers and used fewer utilities than the Tenants. However, I find that this situation is the very reason why the policy guideline suggests that a term requiring a tenant to pay for other renter's utilities in the same premises is likely to be found unconscionable, which I find is the case here.

I find the Landlord's evidence that the Tenants were offered, and accepted a rent reduction before the tenancy began is insufficient as it is reliant only on oral testimony which was disputed by the Tenants. I find the Landlord's oral evidence was contradicted by the Tenant's evidence which shows that the rental unit was advertised for the amount of \$900.00 exclusive of utilities and that this was what was agreed to by the parties pursuant to the tenancy agreement. Therefore, based on the evidence before me, I am only able to conclude that the Landlords had not reduced the rent by \$75.00 to account for the utilities used by the basement renters. I find that even if the Landlords had reduced the rent, it would have been impossible to attribute a set amount of utilities (\$75.00) that would accurately reflect the actual utility usage of the basement renters.

Section 67 of the Act states that if damage results from a party's breach of the Act, regulations or tenancy agreement, an Arbitrator may award compensation to the party. Therefore, as the Tenants paid utility amounts during their tenancy due to an unconscionable term in the tenancy, I find the Tenants are to be awarded compensation.

In determining the quantum of damages to be awarded, I find that I am unable to determine the exact utility usage by the basement renters at any given time during the tenancy. I further find that it is more reasonable to determine the utility usage amount based solely on square footage. Although the Landlord argued that the usage of the basement renters was a lot lower than the Tenants, I find that the Landlords should not have put the Tenants in this situation to pay for another parties utility usage; and that the Landlord failed to provide any comparative evidence of the utility usage by the basement renters and at what times other renters were not present to use utilities during the Tenants' tenancy.

Accordingly, to determine the amount of square footage, I turned to the Landlord's evidence regarding the square footage of the rental unit (1,295) versus the square footage of the basement portion (510). These numbers were based on the sketches and calculations made by the Landlords which were not disputed by the Tenants. I find that based on square footage, it is reasonable under these circumstances that the Tenants

would have only been liable to pay for 61% of the total utilities paid in this tenancy. Therefore, the Tenants should be awarded 39% of the total utilities overpaid in this tenancy rather than the 50% claimed. As a result, the amount to be awarded to the Tenants is \$1,783.08 (39% of \$4,572.00).

I reduce the Tenants' award by \$143.40 because the Tenants acknowledged that they were liable to pay to the Landlords this amount. As the Tenants have been successful in this Application, I grant them the filing fee of \$100.00 they paid to file the Application pursuant to Section 72(1) of the Act. Therefore, the balance payable to the Tenants is \$1,739.68 (\$1,783.08 - \$143.40 + \$100.00). The Tenants are issued with a Monetary Order which is enforceable in the Small Claims Division of the Provincial Court if the Landlords fail to make payment. Copies of the Monetary Order are attached to the Tenants' copy of this Decision.

### Conclusion

The Landlords breached the Act by making the Tenants pay for utilities used by basement renters that were not part of their tenancy. Therefore, the Tenants are granted relief in the amount of \$1,793.68. This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: November 7, 2016

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Residential Tenancy Branch