



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR MNDC MNSD FF

### Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- a monetary order for unpaid rent or utilities and compensation for damage or loss pursuant to section 67;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Tenant:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

### Preliminary and Procedural Matters – Late Evidence

Rule 3.14 & 3.15 of the Residential Tenancy Branch (the Branch) Rules of Procedure requires an applicant’s & respondent’s evidence to be received by the other party and the Branch not less than 7 and 14 days, respectively, before the hearing. The only evidence submitted by the tenants in support of their own application and in response to

the landlord's application was received by the Branch on December 1, 2016 and sent to the landlord by registered mail on December 2, 2016. The landlord testified he did not receive this evidence until December 10, 2016 so he didn't have sufficient opportunity to respond to it. The landlord did submit a response but it was not received by the Branch until after the hearing. The tenant failed to provide any explanation for why this evidence was not submitted in accordance with the Rules of Procedure. The parties were advised that the tenant's evidence and landlord's subsequent response would not be accepted or considered in this decision.

### Issues

Is the landlord entitled to a monetary award for unpaid rent and/or utilities and compensation for damage or loss?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Is the tenant entitled to a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement?

Is the tenant entitled to return of all or a portion of the security deposit pursuant to section 38?

Is the tenant entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

The tenancy for this upstairs portion of a residential log home began on July 1, 2015 and ended on June 30, 2016. The monthly rent was \$1200.00 plus utilities payable on the 1<sup>st</sup> day of each month. A security deposit of \$600.00 was paid at the start of the tenancy which the landlord continues to retain. The downstairs portion and the backyard of the home were shared with the landlord. The landlord did not reside in the home but stored his furniture in the downstairs portion.

The landlord's application is for compensation for outstanding payment of the electricity bills for the months of February 2016 in the amount of \$626.81, April 2016 in the amount of \$473.89, June 2016 in the amount of \$162.49 (billing period up to June 9, 2016) and the prorated amount of \$50.14 for the period of June 10, 2016 to June 29, 2016). The landlord provided copies of the utilities bills.

The landlord is also claiming unpaid rent for the month of June 2016 in the amount of \$1200.00. In the hearing, the landlord acknowledged rent was paid for the month of May 2016 and this amount was withdrawn from the application.

The tenants argue they made a payment of \$300.00 towards the utilities bill in February of 2016 and feel this should be deducted from the outstanding amount. The tenants also argue they made a payment of \$1540.00 towards utilities in March 2016.

In reply, the landlord testified that the \$300.00 payment made in February 2016 was a partial payment towards an outstanding utilities bill from December 2015 and the payment in the amount of \$1540.00 was for the balance of the December utilities bill and March rent of \$1200.00. The landlord also testified that the tenant phoned him on April 20, 2016 asking for a reduction to the February utilities bill which was in the amount of \$926.81. The landlord testified that at the time he agreed to reduce this February bill by \$300.00. The landlord testified that this supports his claim that any payments made prior to the date of April 20, 2016 were for previous bills.

The tenants' application is for monetary compensation in the amount of \$3200.00 for disturbances caused by the landlord during the last month of tenancy. The tenants argue the rental unit was listed for sale towards the end of May 2016 and there were countless people coming to the house at all types of hours throughout the day. The tenants also argue that the tenancy agreement provided them with access to the backyard but during the last month there was junk placed all over the yard restricting access.

In response to the tenants' application, the landlord testified that the house was only listed for sale for a total of 9 days so there were not countless people showing up as alleged by the tenants. The landlord testified that he only has two showings and the tenants were cooperative with the showings.

In reply, the tenants argue there were lots of people coming and going over the 9 day period of showings including the landlord who would come and go at all hours of the day.

### Analysis

Section 26(1) of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I accept the landlord's claim for unpaid rent in the amount of **\$1200.00** for the month of June 2016 which was not disputed by the tenants.

I also accept the landlords claim for outstanding utilities in the amount of **\$1313.33**. I find the tenancy agreement provided for the payment of utilities by the tenant. The landlord provided copies of bills supporting the amounts claimed. I accept the landlord's argument that the payments alleged to have been made by the tenants were for utilities bills prior to February 2016 which are not being claimed by the landlord. The tenants have provided insufficient evidence of paying the utilities amounts claimed to be outstanding by the landlord.

As the landlord was successful in his application, I find that the landlord is entitled to recover the **\$100.00** filing fee paid for his application.

Although the landlord's application does not seek to retain the security deposit, using the offsetting provisions of section 72 of the Act, I allow the landlord to retain the \$600.00 security deposit in partial satisfaction of the monetary award.

**The landlord is therefore granted a monetary order in the amount of \$2,013.33 (\$1200.00 + \$1313.33 + \$100.00 - \$600.00).**

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Pursuant to section 28 of the Act, a tenant is entitled to quiet enjoyment of the rental unit including but not limited to rights to the following:

- reasonable privacy;
- freedom from unreasonable disturbance;
- exclusive possession of the rental unit, subject to the landlord's rights contained in section 29; and
- use of common areas for reasonable and lawful purposes, free from significant interference.

*Residential Tenancy Policy Guideline #6* "Entitlement to Quiet Enjoyment" provides the following guidance:

In order to prove a breach of the entitlement to quiet enjoyment, the tenant must show that there has been substantial interference with the ordinary and lawful enjoyment of the rental premises. This includes situations in which the landlord has directly caused the interference or was aware of the interference but failed to take reasonable steps to correct it. It is also necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises. Temporary discomfort or inconvenience does not constitute a basis for a breach under this section.

The tenants have not provided sufficient evidence either by way of oral testimony or written submissions to support a finding that there has been substantial interference with their ordinary and lawful enjoyment of the rental premises. The property was only listed for a period of 9 days and the tenants have not provided any evidence to support their argument that there were countless showings over this period. Further, the tenants did not provide any supporting evidence, within the timelines established under the Rules of Procedure, with respect to their argument of restricted access to parts of the rental unit.

I find the tenants have not established that the landlord failed to comply with the Act, the regulations or the tenancy agreement.

The tenants' application is dismissed without leave to reapply.

As the tenants were not successful in this application, I find that the tenants are not entitled to recover the \$100.00 filing fee paid for this application.

### Conclusion

Pursuant to section 67 of the *Act*, **I grant the landlord a Monetary Order in the amount of \$2,013.33.** Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: January 11, 2017

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Residential Tenancy Branch