



# Dispute Resolution Services

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## Residential Tenancy Branch Office of Housing and Construction Standards

A matter regarding HOMETOWN ENTERPRISES (1933) LTD  
and [tenant name suppressed to protect privacy]

### **DECISION**

Dispute Codes MNR MNSD MNDC FF O

#### Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution (the "Application") seeking remedy under the *Residential Tenancy Act* (the "Act"). The landlord applied for a monetary order for unpaid rent or utilities, to retain the tenants' security deposit, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, to recover the cost of the filing fee and other unspecified relief.

The landlord and tenants attended the teleconference hearing. The parties were provided with an opportunity to ask questions about the hearing process and the parties were affirmed at the start of the hearing. A summary of the testimony and documentary evidence presented is provided below and includes only that which is relevant to the matters before me.

Neither party raised any concerns regarding the service of documentary evidence.

#### Preliminary and Procedural Matter

At the outset of the hearing, the landlord affirmed that he was reducing his monetary claim from the original amount of \$4,792.25 to the reduced amount of \$4,302.13. I find there is not prejudice to the tenants regarding a reduced monetary claim. I also note that the landlord amended his Application under the *Act* to the reduced amount.

#### Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants' security deposit under the *Act*?

#### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on July 1, 2016 and required vacant possession at the end date of December 31, 2016. The tenants vacated the rental unit on October 29, 2016. The monthly rent of \$1,800.00 was due on the first day of each month. The tenants paid a security deposit of \$900.00 at the start of the tenancy which the landlord continues to hold.

The landlord's reduced monetary claim of \$4,302.13 is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED

1. Water and sewer for October 2016	\$74.96
2. Water and sewer for November 2016	\$74.96
3. Water and sewer for December 1-14, 2016	\$37.48
4. Rent for November 2016	\$1,800.00
5. Rent for half of December 2016	\$900.00
6. BC hydro November 1-December 14, 2016 of \$34.13 (less consumption from Nov. 7 – Nov 18, 2016 of \$8.77)	\$25.36
7. Natural gas from November 1, 2016 – December 14, 2016	\$103.79
8. Filing fee	\$100.00
9. Check house every 72 hours for insurance purposes (A. November – 10 times per month at \$25.00 per occasion and B. December – 5 times per month at \$25.00 per occasion)	\$375.00
10. Shovel snow from deck, driveway and parking area (Nov. 20, 23, Dec. 2, 9 & 11 <sup>th</sup> , 2016)	\$125.00
11. Registered mail costs	\$25.58
12. Personal time spent preparing paperwork (6.5 hours at \$80.00 per hour)	\$520.00
13. Rake yard and haul away leaves	\$140.00
<b>TOTAL</b>	<b>\$4,302.13</b>

#### Settlement Agreement

During the hearing, the parties agreed on a settlement agreement regarding one of the items being claimed by the landlord. As a result, the corresponding item number will not be included in the analysis section of this decision as all matters which form part of the settlement agreement were voluntarily agreed upon by the parties, pursuant to section 63 of the *Act*, and the parties were made aware of and agreed that their mutual agreement forms a final and binding agreement between the parties as mutually resolved matters related to this tenancy.

<b>Settlement Agreement Item Number</b>	<b>Agreed upon compensation to landlord by tenants</b>
1. Water and sewer for October 2016	\$74.96
<b>TOTAL</b>	<b>\$74.96</b>

#### Evidence Regarding Remaining Items

##### Item 2

Regarding item 2, the landlord has claimed \$74.96 for the cost of water and sewer for the month of November 2016. The landlords testified that the tenants are liable for the cost of the water and sewer for the full month of November 2016 and half of December 2016 as the landlord was unable to re-rent the

rental unit until December 15, 2016 and that the tenancy agreement did not include the cost of the water and sewer. The tenancy agreement reads in part:

"Tenant is responsible for paying all utilities including water, sewer & garbage"

[Reproduced as written]

The tenants' response to item 2 was that they do not believe they are responsible for the cost of water and sewer for November 2016 as they were not residing there and had vacated the rental unit as of October 29, 2016.

Item 3

Regarding item 3, the landlord has claimed \$37.48 for the cost of water and sewer for the period of December 1-14, 2016 as the landlord was unable to secure new tenants until December 15, 2016. The tenants' response was the same for item 2 described above.

Item 4

Regarding item 4, the landlord has claimed \$1,800.00 for loss of November 2016 rent. The tenants' response was that they feel they are not responsible for loss of November 2016 rent as they vacated the rental unit in October 2016 and were not occupying the rental unit. The agent stated that the rental unit was posted to a popular online classified website on October 26, 2016 when the landlord expected to receive written notice from the tenant's which was not received in writing until October 31, 2016. The landlord confirmed that initially the landlord advertised the rental unit for \$2,000.00 instead of the original amount of \$1,800.00 and then lowered the advertised rent back to \$1,800.00 as of November 14, 2016 and in early December, new tenants agreed to move in as of December 15, 2016.

Item 5

Regarding item 5, and consistent with item 4 above, the landlord is relying on the same evidence described in item 4 above as the landlord is claiming a loss of \$900.00 for December 1-14, 2016 rent before the new tenants moved in on December 15, 2016. The tenants stated that their response for item 5 is the same as item 4 described above.

Item 6

The landlord has claimed \$25.36 which is comprised of hydro costs from November 1 to December 14, 2016 of \$34.13 less \$8.77 for consumption use from November 7 to 18, 2016, inclusive. The agent stated that a builder next door asked to plug into the rental unit from November 7 to 18, 2016 which the agent agreed to and as a result, the landlord has decreased that period of usage from the hydro bill. The landlord submitted a copy of the hydro bill in evidence. The tenants stated that since they were not residing in the rental unit that they should not have to pay this portion of the landlord's monetary claim.

Item 7

Regarding item 7, the landlord has claimed \$103.79 which is comprised of natural gas costs from November 1 to December 14, 2016. The agent referred to a natural gas bill submitted in evidence in

support of this portion of the landlord's monetary claim. The tenants stated that since they were not residing in the rental unit that they should not have to pay this portion of the landlord's monetary claim.

Item 8

This item relates to the landlord's request for the recovery of the cost of the filing fee which will be addressed later in this decision.

Item 9

The landlord has claimed for the costs related to having to attend the rental unit every 72 hours after the tenants vacated the rental unit to ensure the landlord's property insurance remained in effect. The agent referred to a letter submitted in evidence from the landlord's insurance company which supports that the vacant rental unit must be checked every 72 hours to ensure continued insurance coverage for the landlord. The letter is from an insurance broker and is dated November 7, 2016. The agent testified that there were a total of 10 trips in November, nine kilometers in one direction to the rental unit to check on the rental unit plus 5 trips for December. The agent stated that the landlord is claiming \$25.00 per trip and is a cost related to the tenants breaching the fixed term tenancy agreement for a total amount of 15 trips with a total claim for item 9 of \$375.00. The tenants did not agree with any portion of the landlord's claim with the exception of the mutual agreement described above.

Item 10

Regarding item 10, the landlord has claimed \$125.00 to shovel snow from the deck, driveway, and parking area on November 20, 23, December 2, 9 and 11, 2016. The agent confirmed that there were no photos submitted in evidence of the snow on the deck, driveway, and parking area. The agent stated that the landlord is claiming \$25.00 for each trip on the five dates described above. The tenants did not agree with this portion of the landlords' claim.

Item 11

As this item relates to the costs associated with registered mail, this item for \$25.58 was dismissed during the hearing as there is no remedy under the *Act* to recover the cost of registered mail from the respondent. The agent was informed that the filing fee is a cost that is recoverable and will be addressed later in this decision.

Item 12

The landlord has claimed \$520.00 for 6.5 hours at \$80.00 per hour for the agent's personal time to prepare the paperwork for this proceeding. The agent was informed that this item was dismissed as there is no remedy for such costs under the *Act*.

Item 13

The landlord has claimed \$140.00 to rake yard and haul away leaves. The agent affirmed during the hearing; however that his gardener "jumped the gun" and cleaned up before the time period the landlord provided to the tenants to address this time. As a result, this item was dismissed during the hearing as I

find the tenants are not responsible for such costs if the landlord's gardener cleaned up before the deadline provided for the tenants to do so and "jumped the gun" as confirmed by the landlord.

### Analysis

Based on the testimony of the parties provided during the hearing, the documentary evidence 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 landlord 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 tenants. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the landlord did what was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

**Item 1** – As described above, the parties reached a mutually settled agreement regarding item 1 whereby the tenants agree to compensation the landlord \$74.96 for the October 2016 water and sewer bill. The parties are reminded that their mutual agreement was made on a voluntary basis and forms a binding and enforceable agreement between the parties pursuant to section 63 of the *Act*.

**Item 2** - Regarding item 2, the landlord has claimed \$74.96 for the cost of water and sewer for the month of November 2016. I have considered the wording of the tenancy agreement which reads in part:

"Tenant is responsible for paying all utilities including water, sewer & garbage"

[Reproduced as written]

Based on the above, section 45(2) of the *Act* applies and states:

**45 (2)** A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

[My emphasis added]

Based on the above, I find the tenants breached section 45(2) of the *Act* and the tenancy agreement relating to the payment of utilities by breaching a fixed term tenancy which was a fixed term until December 31, 2016 and that the tenants were liable for these costs until such time that the landlord was able to re-rent the rental unit which was not until December 15, 2016. Therefore, I do not agree with the tenants' argument that they are not responsible for the costs as they were not living there. The tenants breached a fixed term tenancy and are responsible for these costs when they breach a tenancy agreement under the law. As a result, I find the landlord has met the burden of proof and is awarded **\$74.96** for this portion of the landlord's claim which I find is supported by the documentary evidence provided by the landlord.

**Item 3** - Regarding item 3, and consistent with my findings described in item 2 above, I find the tenants are liable for the full \$37.48 for the cost of water and sewer for the period of December 1-14, 2016 as the landlord was unable to secure new tenants until December 15, 2016. As a result, I find the landlord has met the burden of proof and is awarded **\$37.48** for this portion of the landlord's claim.

**Item 4** - Section 26 of the *Act* applies and states:

**Rules about payment and non-payment of rent**

- 26 (1) 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.

[My emphasis added]

In the matter before me, I find the tenants had no right to deduct all or portion of the rent for any reason for November 2016 and that the liability to pay the rent existed even when the tenants vacated the rental unit as the tenants breached a fixed term tenancy and are liable for loss of rent as a result. I disagree with the tenants' argument that they did not have to pay rent as they were not residing there. Therefore, I find the tenants breached sections 26 and 45(2) of the *Act* and I award the landlord **\$1,800.00** for loss of November 2016 rent as I find the landlord has met the burden of proof for this portion of their monetary claim. Even though the landlord had a higher amount of rent advertised for 14 days, the need for this advertisement was directly related to the tenants' breach of the *Act* and as the landlord reduced rent to the original amount of \$1,800.00 after 14 days of advertising, I find the landlord complied with section 7 of the *Act* which reflects part four of the test for damages or loss described above.

**Item 5** - Regarding item 5, and consistent with my finding regarding item 4 above, I find the tenants breached sections 26 and 45(2) of the *Act* by breaching a fixed term tenancy and that the landlord

suffered a loss of rent of **\$900.00** which I award the landlord as a result. I find the landlord has met the burden of proof.

**Item 6** - The landlord has claimed \$25.36 which is comprised of hydro costs from November 1 to December 14, 2016 of \$34.13 less \$8.77 for consumption use from November 7 to 18, 2016, inclusive. Consistent with my finding for item 2 described above, I find the tenants have breached section 45(2) of the *Act* and the tenancy agreement relating to payment of utilities and owe the landlord \$25.36 as claimed. Therefore, I award the landlord the amount as claimed for item 6 in the amount of **\$25.36**.

**Item 7** - The landlord has claimed \$103.79 which is comprised of natural gas costs from November 1 to December 14, 2016. The agent submitted a natural gas bill in support of this portion of the landlord's claim. Consistent with my finding for items 2 and 6 described above, I find the tenants have breached section 45(2) of the *Act* and the tenancy agreement relating to payment of utilities and owe the landlord \$103.79 as claimed. Therefore, I award the landlord the amount as claimed for item 7 in the amount of **\$103.79**.

**Item 8** – Regarding the recovery of the cost of the filing fee, as the landlord's application has merit, and pursuant to section 67 and 72 of the *Act*, I grant the landlord the recovery of the cost of the filing fee in the amount of **\$100.00**.

**Item 9** - The landlord has claimed for the costs related to having to attend the rental unit every 72 hours after the tenants vacated the rental unit to ensure the landlord's property insurance remained in effect. The agent referred to a letter submitted in evidence from the landlord's insurance company which supports that the vacant rental unit must be checked every 72 hours to ensure continued insurance coverage for the landlord. I have considered the letter from an insurance broker that is dated November 7, 2016 and I find that this loss to the landlord of 15 trips to the rental unit, once every 72 hours until it was re-rented on December 15, 2016 would not have been suffered if it was not for the breach of the fixed term tenancy agreement by the tenants. As a result, I find the landlord has met the burden of proof and that tenants are liable for the total cost for this item in the amount of **\$375.00**.

**Item 10** - Regarding item 10, as the agent confirmed there were no photos of the snow submitted in support of this portion of the landlord's monetary claim and without further evidence before me I find the landlord has not met the burden of proof for this portion of the landlord's claim. Therefore, I dismiss this portion of the landlord's claim due to insufficient evidence, without leave to reapply.

**Item 11** – As described above, this item relates to the costs associated with registered mail in the amount of \$25.58. This portion of the landlord's monetary claim was dismissed during the hearing as there is no remedy under the *Act* to recover the cost of registered mail from the respondent.

**Item 12** – As described above, the landlord has claimed \$520.00 for 6.5 hours at \$80.00 per hour for the agent's personal time to prepare the paperwork for this proceeding. The agent was informed that this item was dismissed as there is no remedy for such costs under the *Act*.

**Item 13** - The landlord has claimed \$140.00 to rake yard and haul away leaves. As describe above, this item was dismissed during the hearing as I find the tenants are not responsible for such costs if the landlord's gardener cleaned up before the deadline provided for the tenants to do so and "jumped the gun" as confirmed by the landlord.

Based on the above, I find the landlord has established a total monetary claim of **\$3,491.55**, comprised as follows:

ITEM DESCRIPTION	AMOUNT AWARDED OR AGREED UPON
1. Water and sewer for October 2016	\$74.96 (agreed upon by mutual agreement)
2. Water and sewer for November 2016	\$74.96
3. Water and sewer for December 1-14, 2016	\$37.48
4. Rent for November 2016	\$1,800.00
5. Rent for half of December 2016	\$900.00
6. BC hydro November 1-December 14, 2016 of \$34.13 (less consumption from Nov. 7 – Nov 18, 2016 of \$8.77)	\$25.36
7. Natural gas from November 1, 2016 – December 14, 2016	\$103.79
8. Filing fee	\$100.00
9. Check house every 72 hours for insurance purposes (A. November – 10 times per month at \$25.00 per occasion and B. December – 5 times per month at \$25.00 per occasion)	\$375.00
10. Shovel snow from deck, driveway and parking area (Nov. 20, 23, Dec. 2, 9 & 11 <sup>th</sup> , 2016)	dismissed
11. Registered mail costs	dismissed
12. Personal time spent preparing paperwork (6.5 hours at \$80.00 per hour)	dismissed
13. Rake yard and haul away leaves	dismissed
<b>TOTAL</b>	<b>\$3,491.55</b>

As the landlord has claimed against the tenants' security deposit of \$900.00 which as accrued no interest to date and pursuant to section 72 of the *Act*, I authorize the landlord to retain the tenants' security deposit in full in the amount of \$900.00 in partial satisfaction of the landlord's monetary claim. Pursuant to section 67, I grant the landlord a monetary order for the balance owing by the tenants to the landlord in the amount of **\$2,591.55**.

#### Conclusion

The landlord's application has merit and is partially successful.

Regarding item 1 which was resolved by way of a mutually settled agreement between the parties, the parties confirmed that they were voluntarily agreeing to the mutual agreement. Pursuant to section 63 of the *Act*, the parties confirmed they were made aware of and agreed that their mutual agreement forms a final and binding agreement between the parties as mutually resolved matters related to this tenancy.



The landlord has established a total monetary claim in the amount of \$3,491.55. The landlord has been authorized to retain the tenants' full security deposit of \$900.00 which has accrued no interest. The landlord has been granted a monetary order under section 67 for the balance owing by tenants to the landlord in the amount of \$2,591.55. The landlord must serve the tenants with the monetary order. The monetary order 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: June 2, 2017

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Residential Tenancy Branch