



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC FF

### Introduction

This hearing dealt with the tenant's application pursuant to 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 pursuant to section 67;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. The tenant was not able to pick up the landlord's evidence package sent by registered mail due to a spelling error in his name. The landlord agreed to proceed with the hearing without her evidence package being considered.

### Issues

Is the tenant entitled to reimbursement for a portion of the utilities bills and one month's rent for illegally being evicted?

### Background and Evidence

The rental unit is a 3 storey house and the tenant and his co-tenants occupied the main floor and upstairs portion of the house. The tenancy began on September 1, 2015. The monthly rent as per the agreement was \$3600.00 per month plus 60% of the utilities. The tenancy ended on March 31, 2017 after the tenants were served with a 1 Month Notice to End Tenancy which the tenant did not dispute.

The tenant is claiming reimbursement of a portion of the utilities bills for the full duration of the tenancy. The tenant testified that they never had working heat in the upstairs portion of the house and the endured months of the electrical panel short circuiting. The tenant testified that the landlord was made aware of the issues but nothing to repair the

issue up to the end of the tenancy. The tenant is also claiming 1 month's rent for illegal eviction.

The landlord testified the tenancy agreement required the tenants to pay 60% of the utilities. The landlord testified a licensed electrician was sent to check the issue raised by tenants but found the circuit overloading was caused by the tenants. The tenants paid the full utilities bills during their tenancy and are now seeking re-imbursement after the fact. The tenants settled their accounts including return of the security deposit at the end of the tenancy.

### Analysis

Section 47 of the Act contains provisions by which a landlord may end a tenancy for cause by giving notice to end tenancy. Pursuant to section 47(4) of the Act, a tenant may dispute a 1 Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 1 Month Notice.

The tenant was legally served with a 1 Month Notice under the Act. The tenant had a right under the Act to dispute this Notice and had he done so the onus would have been on the landlord to establish cause for ending the tenancy. As the tenant did not file an application to dispute the Notice but rather accepted the Notice and voluntarily vacated the rental unit, I find the landlord did not illegally evict the tenant. The tenant's claim for compensation for 1 month's rent is dismissed.

Pursuant to section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim on a balance of probabilities. To prove a loss, the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I find the tenant has failed to meet the fourth criteria of the above test, by failing to take the appropriate steps to mitigate or minimize the loss claimed. The tenant has waited a full two months after the conclusion of a 18 month long tenancy to make an application

requesting re-imbursement of utilities bills for the duration of the tenancy. The tenant is claiming there were issues with the heating since the outset of the tenancy. I find that in order to mitigate or minimize the loss claimed over the 18 month tenancy, the tenant ought to have made an application requesting the landlord to make the alleged repairs in a timely manner. Waiting until 2 month's until after the end of the tenancy to request a re-imbursement is not a timely manner. Had the tenant made a timely application to request an order for the landlord to conduct the necessary repairs, the matter could have been resolved and any alleged loss could have been minimized. The tenant's claim for re-imbursement of a portion of the utilities bills is dismissed.

### Conclusion

The tenant's application is dismissed without leave to reapply.

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: July 18, 2017

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Residential Tenancy Branch