



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      DRI FFT LRE MNDCT OLC MNDCL

### Introduction

This hearing was scheduled to consider cross-applications pursuant to the *Residential Tenancy Act* (the “*Act*”).

The tenants seek:

- a monetary award for money owed or compensation for damage or loss under the tenancy agreement pursuant to section 67 of the *Act*;
- an Order directing the landlord to comply with the *Act* pursuant to section 62;
- an Order setting or suspending conditions on the landlords’ right to enter the rental unit pursuant to section 70 of the *Act*;
- to dispute an additional rent increase pursuant to section 43 of the *Act*; and
- a return of the filing fee pursuant to section 72.

The landlord seeks:

- a monetary order for unpaid utilities and for money owed for loss under the *Act* pursuant to section 67.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Both parties confirmed receipt of each other’s applications for dispute resolution and evidentiary package.

### Issue(s) to be Decided

Is either party entitled to a monetary award?

Should the landlords be directed to comply with the *Act*?

Should an Order be made suspending or setting conditions on the landlords' right to enter the rental unit?

Can the tenants dispute an additional rent increase?

Are the tenants entitled to return of the filing fee?

### Background and Evidence

Testimony was provided by both parties that this tenancy began on May 1, 2015. Rent is \$1,500.00 per month, and a security deposit of \$725.00 per month collected at the outset of the tenancy continues to be held by the landlords.

The tenants have applied for a monetary award of \$1,021.74, while the landlords have applied for a monetary award of \$688.00. In addition, the tenants are seeking orders directing the landlords to comply with the *Act*, disputing an additional rent increase and suspending the landlords' right to enter the rental unit.

During the hearing, the parties agreed on the following facts. The tenants rent the top floor of a home, with the bottom floor being occupied by the landlords on an infrequent basis. The landlords stated that they are in the home approximately 5% of the year. The tenants did not dispute this figure.

The tenants stated that they share a laundry facility and that their rent includes storage in the basement. When the parties first entered into a tenancy agreement, the tenants agreed to pay \$200.00 per month for utilities. On May 1, 2016, the tenants agreed to pay \$225.00 to cover increased utility costs. Both parties acknowledged that they entered a verbal agreement on the costs of utilities and that there has since been a dispute as to what exactly this new amount of \$225.00 included. The landlords said that the \$225.00 paid only basic utilities but did not include use of the internet. The tenants argued that they understood the \$225.00 to include internet.

On September 26, 2017, the tenants received a demand letter from the landlords seeking payment of \$1,056.74 for unpaid utilities. The tenants stated that they paid this amount as they feared eviction; however, they were now seeking a return of this money. The landlords argued that this demand letter contained a more accurate account of the utilities that were being used by the tenants. This September 26, 2017 demand letter included requests as follows:

- Upgraded internet from June 2015 till end of July 2017 - \$565.00

- August 2017 underpaid utilities as per monthly statements - \$302.83
  - September 2017 underpaid utilities as per monthly statements - \$188.91
- = \$1,056.74

The landlord said that their application for a monetary award reflected further unpaid bills that have accumulated through the tenancy.

In addition to an application for a monetary award, the tenants are seeking orders directing the landlords provide sufficient notice under section 29 of the *Act*, and to allow them to lock the door which connects their suite to the laundry and storage areas. The landlords did not dispute either of these requests.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on both parties to prove their entitlement to a monetary award.

*Residential Tenancy Policy Guideline #16* examines the issue of compensation for damage and loss in detail. It notes;

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether...a party to a tenancy agreement has failed to comply with the *Act*, regulations or tenancy agreement; loss or damage has resulted from this non-compliance; the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Despite the large volume of evidence and numerous emails and invoices provided as part of the landlord's evidentiary package, little evidence of the specific terms of any agreement between parties on the details of "utilities" agreed upon.

The tenants are seeking a refund for the money they paid in response to the demand letter that they received for unpaid utilities, while the landlords are seeking payment for internet that they argued was unpaid for numerous months. The tenants said they paid on receipt of the demand letter as they feared eviction from the rental unit.

A review of the tenancy agreement signed between the parties shows that rent does not include water, electricity, and heat. I find that it is therefore reasonable to conclude that the landlord's acceptance of \$225.00 for "utilities" would indicate an agreement by the parties to include at the very least, water, electricity and heat. I find little evidence was presented by either party that an agreement was ever reached between the parties that the tenants' payment of \$225.00 should include the use of the internet; however, some evidence was presented by the landlord that the internet was upgraded at the request of the tenants. Despite these upgrades, there is no indication that the tenants agreed to pay for the improved service.

I do not find that either party has sufficiently demonstrated that damage or loss has stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. After having considered the oral testimony of the parties, and after having carefully reviewed the evidence submitted to the hearing, I do not find sufficient evidence was presented by either party that they are entitled to a monetary award under section 67 of the *Act*. I find that the confusion between the parties has resulted from their own miscommunication, rather than a wrong committed by either party.

Both the tenants and the landlords' application for a monetary award are dismissed.

In addition to an application for a monetary award, the tenants sought orders directing the landlords provide sufficient notice under section 29 of the *Act*, and to allow them to lock the door which connects their suite to the laundry and storage areas. The landlords did not dispute either of these requests and these orders will be included.

## Conclusion

Both the tenants and the landlords' applications for monetary awards are dismissed.

The landlords are directed to comply with section 29 of the *Act* and to provide the tenants with at least 24 hours written notice of their intention to enter the rental property.

I order the landlords to allow the tenants to install a lock between their suite and the storage area and laundry room.

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 15, 2018

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Residential Tenancy Branch