



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCL; FFL

### Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid utilities, losses and damages arising out of this tenancy pursuant to section 67; and
- authorization to recover their filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As Tenant PL (the tenant) confirmed that both tenants received copies of the landlords' dispute resolution hearing package and written evidence package sent by registered mail, I find that the tenants were duly served with these packages in accordance with sections 88 and 89 of the *Act*. The tenant testified that they did not submit any written evidence for this hearing.

### Issues(s) to be Decided

Are the landlords entitled to a monetary award for unpaid utilities, losses and/or damages arising out of this tenancy? Are the landlords entitled to recover the filing fee for this application from the tenants?

### Background and Evidence

The parties signed a one year fixed term residential tenancy agreement (the Agreement) on August 1, 2014 for a tenancy that was to run from August 1, 2014 until July 31, 2015. When this initial fixed term tenancy concluded, the tenancy continued on a month-to-month basis until March 31, 2017, when the tenants vacated the premises. According to the terms of the Agreement, the tenants were responsible for utilities listed as water, electricity, heat, cablevision, and garbage collection, in addition to their monthly rent of \$1,350.00, payable on the first of each month. The tenant's security and pet damage deposits have been returned to the tenants in their entirety. The tenancy ended when the tenants vacated the premises on March 31, 2017.

The landlord's agent (the agent) who represented the landlords' interests in this matter for the duration of this tenancy, gave undisputed sworn testimony and written evidence that the tenants only paid the utilities for the first and last municipal billing period of their tenancy. The landlord maintained that a total of \$2,039.88 in charges for garbage disposal, sewage, water and recycling fees was not paid by the tenants during the course of their tenancy. These unpaid charges extended from December 31, 2014 until May 31, 2017. The landlord supplied copies of receipts outlining each of the above-noted charges that the landlord sought to recover from the tenants. As noted below, these charges also included a \$66.82 penalty imposed by the municipality for the failure to pay these charges in a timely fashion.

<b>Item</b>	<b>Amount</b>
Tenants' Responsibility for Water Charges	\$868.10
Tenants' Responsibility for Garbage and Recycling Charges	373.27
Tenants' Responsibility for Sewer Charges	731.69
Penalty Charge by Municipality	66.82
<b>Total Monetary Order Requested by Landlord</b>	<b>\$2,039.88</b>

The agent testified that they sent the tenants a request for partial payment of the first utility bill shortly after this tenancy commenced because the bill included a period prior to the tenants having moved into the rental unit. In the agent's November 12, 2014 email, the agent attached "the water, gas and sewer bill" for July, August and September, noting that the tenants would not be responsible for July because their tenancy did not begin until August 2014. The agent requested payment of \$159.84 for these utilities. The tenants complied with this request.

Following this first bill which had found its way to the landlords (or their agent), municipal bills for water, garbage and recycling, and sewer charges continued to be sent to the landlords at the address for the rental unit. Although these bills were received at the rental unit, they were not apparently forwarded to the landlords nor was the agent advised that mail from the municipality was being received there. The agent testified that they believed that the tenants were looking after paying these municipal utility bills, even though the bills were addressed to the landlords at the tenants' address and not to the tenants directly.

The agent testified that the landlords did not realize that these unpaid municipal bills were being added to the landlords' municipal property tax bill each year. After this tenancy ended, the new tenants alerted the landlords to the most recent bill sent to the landlords at the rental unit. The landlords divided the partial portions of this final bill between the old and new tenants and requested that the tenants in the current application pay their portion of the municipal utility bill. The tenants again paid their portion requested.

The landlords and the agent did not discover that the tenants had not been paying the municipal utility bills until after this tenancy had ended. They learned that the municipality had been including payment of these unpaid charges in the landlord's annual property tax bill, which the landlords had been paying since near the beginning of this tenancy. Once the landlords discovered that the tenants had not been paying their municipal utility bills, the agent requested payment from October 2014 until the billing period immediately preceding the end of this tenancy. The tenants refused to do so.

The tenant testified that the tenants paid the only bills for the municipal utility charges submitted to them by the landlords (i.e., those covering the first and last billing periods of their tenancy). The tenant said that they could not open mail sent by the municipality to the landlord at the tenants' rental address. The tenant observed that it was not their responsibility to seek out the landlords or their agents whenever mail was sent to the landlords at the rental unit.

The tenant also observed that there was no specific provision in the Agreement for the tenants' responsibility for municipal sewage charges. The tenant maintained that the tenants should only be held responsible for those bills presented to the tenants for payment during the course of their tenancy and for the final billing period of their tenancy. The tenant noted that they paid bills when requested by the agent, but balked at paying municipal charges that the landlord had been paying for years without requesting payment from the tenants.

### 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. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

In this case, I find that the Agreement did establish that the tenants were responsible for payments for water and garbage collection, which I take to also include recycling fees. As the Agreement is silent on whether the tenants are responsible for sewage charges levied by the municipality and the landlords prepared this Agreement, I find that the tenants would not be held responsible for the \$731.69 in sewage charges claimed by the landlords.

In considering the remainder of the landlords' claim, I find that the landlords made a number of errors with respect to the timely presentation of bills to the tenants for reimbursement.

Although the tenants may have suspected that mail sent to the landlords by the municipality may have been important and may have contained invoices for the payment of municipal utility charges, the tenant is correct in observing that the tenants had no right to open mail addressed to the landlords. While the landlords and their agent may have expected that the tenants were looking after the municipal utility charges during the course of this tenancy, they took no action to ensure that bills that the agent said could only be addressed to the landlords were sent or forwarded to an address where the landlords or their agent would receive them.

Rather than being attentive to this matter, once the landlords or their agent received the initial municipal utility bill, the agent testified that the landlords paid these municipal utility bills themselves as part of their annual property tax bill. In this regard, I find that the landlords' actions in paying these bills on an ongoing basis without ever requesting reimbursement from the tenants until well after the tenancy had ended invoked the legal principle of *estoppel*. By paying the municipal utility charges themselves for several years without seeking any reimbursement from the tenants, the landlords' actions acted as a bar on the landlords from seeking compensation from the tenants after this tenancy had ended. I find that the landlords' previous actions estopped them from pursuing their claim for non-payment of the municipal utility charges in question. I dismiss the landlords' application without leave to reapply.

In coming to this finding, I conclude that the tenants paid all municipal utility charges presented to them for payment during the course of this tenancy. It was not their responsibility to seek out correspondence addressed to the landlords to ensure that the landlords' somewhat unclear rights established pursuant to the Agreement were protected. This responsibility lies with the landlords, who presented the Agreement to the tenants for their signing when this tenancy began. As was noted earlier, the wording of this Agreement was somewhat unclear as to who was responsible for sewage charges. This only serves to highlight that responsibility rested with the landlords and their agent to identify whatever charges the tenants were responsible for paying as a result of their having entered into the Agreement with the landlord.

I also realize that an argument can be made that the tenants' initial payment of a portion of the first municipal utility charge presented to them by the agent may have led to their reasonable expectation that there would be subsequent bills forthcoming.

Nevertheless, I find that the landlords' failure to submit these bills to the tenants for reimbursement and the landlords' direct payment of these bills themselves without ever having demanded reimbursement acted as a bar to the landlords' unreasonably delayed attempt to correct their own mistake after this tenancy had ended. In this regard, I find that the agent's claim that the landlords believed that the tenants were paying the municipal utility charges in question is seriously undermined by the reality that the landlords had been paying these charges for years without seeking reimbursement from the tenants.

#### Conclusion

I dismiss the landlords' application 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: June 12, 2018

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Residential Tenancy Branch