



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCL-S, MNRL-S, FFL

### Introduction

This decision is in respect of the landlords' application for dispute resolution under the *Residential Tenancy Act* (the "Act") filed on September 13, 2018. The landlords sought compensation for water, for unpaid rent, and for firewood (material and labour), pursuant to section 67 of the Act. They also sought compensation for the filing fee, pursuant to section 72 of the Act.

A dispute resolution hearing was convened on January 17, 2019 and the landlords and a tenant attended. The landlords and tenant were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. No issues with respect to the service of documentary evidence was raised by either party.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure*, under the Act, and to which I was referred, only evidence relevant to the two issues of this application are considered in my decision.

### Issues to be Decided

1. Are the landlords entitled to compensation for water, for unpaid rent, and for firewood, pursuant to section 67 of the Act?
2. Are the landlords entitled to compensation for the filing fee, pursuant to section 72 of the Act?

### Background and Evidence

The landlord (K.G.) testified and confirmed that a fixed-term tenancy started on November 21, 2017 and ended on June 30, 2018. Monthly rent was \$1,600.00 and the tenants paid a security deposit of \$800.00, of which the landlords currently retain. A copy of a written tenancy agreement was submitted into evidence.

The landlords seek compensation for the following items: unpaid rent for the second half of June 2018 in the amount of \$800.00; consumed and unreplaced water for the rental unit's cistern, in the amount of \$300.00; replacement firewood in the amount of \$600.00 plus an additional \$100.00 for stacking the firewood; and, the filing fee in the amount of \$100.00. The total amount claimed is \$1,800.00. Receipts pertaining to the above-noted amounts were submitted into evidence by the landlords (except for the filing fee and unpaid rent).

Regarding the unpaid rent for the latter half of June 2018, the landlords submitted into evidence email correspondence between the parties where the tenants confirm and acknowledge that they owe rent. In an email sent from the tenant (D.S.) to the landlord (K.G.) dated June 26, 2018, the tenant states that "It's actually a good thing I didn't send you the 800\$ for the later half of June's rent because I wouldn't have money for July's rent." The landlord testified that this amount of \$800.00 remains owing.

The tenant testified that he had hoped that the landlords would have just kept the security deposit as payment toward the unpaid rent.

Regarding the water claim, the landlord explained that the rental unit's sole source of water is from a 7500-gallon capacity cistern, into which rainwater captured on the roof is directed (after going through a UV filtering process). When there is no rain, and the water is consumed from the tank, the cistern needs refilling. The landlord testified that when the tenants moved in, there was "pretty much a full water tank" and that when the tenants moved out there was "hardly any water left." In response to a question I asked, the landlord acknowledged that they did not have photographic (or any other) evidence regarding the level of the tank at the start of the tenancy. The landlords did submit a photograph of a measuring stick being withdrawn from the cistern on July 1, 2018, purportedly showing the low level of the tank.

The tenant testified that he "never checked the water" after he moved in, but it was his understanding that the contract (that is, the tenancy agreement) did not include water.

He then commented that he did not feel that he was legally bound to it. I note that the written tenancy agreement has water included in the rent.

Regarding the firewood, the landlord testified that there was “a nice stack of firewood” on the property when they took possession of the rental unit, and that firewood is expensive on the island. Wanting to ensure that the tenants did not use the firewood, they drafted an addendum to the tenancy agreement referencing the prohibition on using the firewood. The addendum, which was submitted into evidence, includes two terms, the second of which reads “Use of wood stove: tenant may use wood stove but must provide own wood.” The landlord K.E. and the tenant D.S. initialed the addendum.

When the tenants moved out, the firewood stack (stored in a covered shed, which is depicted in a photograph submitted into evidence) was empty. The landlord commented that the tenant never disputed that he used the firewood and that he was going to have to replenish or pay for the wood. On October 19, 2018, the landlords purchased two cords of wood which cost a total of \$600.00. In addition, they paid the company \$100.00 to have the wood stacked (at \$50.00 per cord).

The tenant agreed that he used firewood but not as much as the landlords claim. He had hoped to buy replacement firewood but was unable to, primarily due to his financial situation throughout the year. He is the sole breadwinner for his wife and two children.

In their final submission, one of the landlords said that they had run into the tenant in person in November 2018. The tenant said at the time that he would like to start paying the landlords back for monies owed. This, however, did not happen.

In his final submission, the tenant testified that his wife has just received her working papers and that he hopes their financial situation will soon improve.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Further, section 67 of the Act

states that if damage or loss results from a party not complying with the Act, the regulations or a tenancy agreement, an arbitrator may determine the amount of, and order that party to pay, compensation to the other party.

When an applicant seeks compensation under the Act, the applicant must prove each of the following four criteria, on a balance of probabilities, for me to consider whether I grant an order for compensation:

1. has the respondent party to a tenancy agreement failed to comply with the Act, the regulations, or the tenancy agreement?
2. if yes, did loss or damage result from that non-compliance?
3. has the applicant proven the amount or value of their damage or loss?
4. has the applicant done whatever is reasonable to minimize their damage or loss?

In this case, the tenant did not dispute that he owes the landlords unpaid rent in the amount of \$800.00. He did not, during testimony, dispute that this is the amount that remains unpaid for rent for June 2018. In addition, his email correspondence of June 26, 2018, confirms his acceptance that he was in arrears of rent.

Taking into consideration all the oral testimony of the parties and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlords have met the onus of proving their claim for compensation for unpaid rent in the amount of \$800.00.

In respect of the water replacement, in their communication with the tenants the landlords referred to *Residential Tenancy Policy Guideline 1. Landlord & Tenant – Responsibility for Residential Premises* regarding the tenants' obligations to refill the water tank. On page 7 of the guideline, the third section is titled "SEPTIC, WATER AND OIL TANKS" which reads as follows: "The tenant must leave water and oil tanks in the condition that he or she found them at the start of the tenancy e.g. half full."

Had the landlords provided strong evidence of the condition of the cistern at the start of the tenancy, I may have had a basis on which to compare the tenants' water use and therefore decide as to whether the tenants met their legal obligations under the policy guideline. Further, given that the tenant testified that he did not check the water level, and did not explicitly agree with the landlord's testimony regarding the level of water in

the tank at the start of the tenancy, I do not find on a balance of probabilities that the landlords have met the onus of proving this aspect of their claim.

While I recognize that the tenant stated in his email that “we will top up the water,” he also states that he “[doesn’t] believe it stated anywhere in the lease anything about fire wood or water.” The onus is on the landlords to prove (A) that the tenants had a legal obligation to return the tank to its at-the-start-of-tenancy level, (B) the level of the tank at the start of tenancy, and (C) the level of the tank at the end of the tenancy. It should also be added that including water in the rent, as indicated on the tenancy, makes the entire issue concerning the tenants’ obligations to refill the water tank rather unclear.

In respect of the landlords’ claim for firewood, there is a letter dated June 24, 2018, from the landlords to the tenant D.S. in which they write, “As per our lease agreement you were not entitled to use this and we expect that it will be replaced in full.” With respect, the tenancy agreement does not in fact say this. Rather, the addendum speaks to the use of the wood stove: “Use of wood stove: tenant may use wood stove but must provide own wood.” The addendum does not say anything about the landlords’ restrictions on using the firewood out in the shed.

That said, the tenant’s testimony and multiple email correspondence confirms his understanding and acceptance regarding his obligations to replace the firewood, if used. He did not agree with the landlord’s submission that he had used as much as she said but was unable to provide any clarification on what his actual use was. But for the tenants’ use, and non-replacement, of the firewood, the landlords would not have incurred the expense of buying more firewood. The cost claimed is reasonable, including the cost to have the wood stacked.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlords have met the onus of proving their claim for compensation for the cost of the firewood.

As the landlords were successful in proving 83% of the total amount claimed, I grant an award of \$83.00 as partial recovery of the \$100.00 filing fee.

A total monetary award of \$1,583.00, and a total monetary order of \$783.00, for the landlords is thus calculated as follows:

CLAIM	AMOUNT
Unpaid rent for June 2018	\$800.00
Firewood	700.00
Filing fee	83.00
<i>LESS</i> security deposit	(800.00)
TOTAL:	\$783.00

### Conclusion

I grant the landlords a monetary order in the amount of \$783.00, which must be served on the tenants. The order may be filed in, and enforced as an order of, the Provincial Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: January 17, 2019

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Residential Tenancy Branch