



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCL-S, MNDL-S, MNRL-S, FFL

### Introduction

This teleconference hearing was scheduled in response to an application by the Landlords under the *Residential Tenancy Act* (the “Act”) for monetary compensation, compensation for damages, compensation for unpaid rent, to retain the security deposit towards compensation owed and for the recovery of the filing fee paid for this application.

The Landlord and a family member (the “Landlord”) were present for the teleconference hearing as was the Tenant and co-tenant (the “Tenants”). The Tenant named on this dispute confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Landlords’ evidence. The Landlord stated that they served the Tenant in person at work due to not having a forwarding address. The Tenant did not submit any evidence prior to the hearing. Neither party brought up any issues regarding service.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Issues to be Decided

Are the Landlords entitled to monetary compensation?

Are the Landlords entitled to compensation for damages?

Are the Landlords entitled to compensation for unpaid rent?

Should the Landlords be allowed to retain the security deposit towards compensation owed?

Should the Landlords be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

### Background and Evidence

The parties were in agreement as to the details of the tenancy. The tenancy began on January 1, 2016. A tenancy agreement was signed for June 1, 2018 stating the new monthly rent as \$1,575.00 due on the first day of each month. The tenancy agreement was submitted into evidence and also confirms that a security deposit of \$750.00 was paid at the outset of the tenancy. The Tenants moved out on October 20, 2018 due to a settlement agreement from a previous dispute resolution proceeding.

The Landlord applied for a total of \$4,589.80, which includes \$3,800.00 in unpaid rent. The Landlord testified that this is an amount of \$650.00 that was unpaid for August 2018 and \$1,575.00 each for September and October 2018.

The Landlord stated that they received a payment of \$425.00 on July 31, 2018 towards August rent, and a payment of \$500.00 on August 17, 2018, leaving an amount of \$650.00 unpaid. The Landlord submitted a receipt dated August 17, 2018 showing a payment of \$500.00 on this date.

The Landlord also submitted a previous dispute resolution decision dated October 11, 2018 in which the parties came to a settlement that the Tenants would move out on October 20, 2018. The dispute was the Tenants' application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice"). The Landlord stated that they received no money towards rent for September or October 2018.

The Tenants testified that they paid July 2018 rent in full, including a payment of \$425.00 on July 31, 2018 to put towards August 2018 rent. They stated that they

received a 10 Day Notice around August 20, 2018, and they paid the remainder of August 2018 rent which then cancelled the 10 Day Notice. The Tenants stated that they attempted to pay rent for September and October 2018, but that it was refused by the Landlord due to a second 10 Day Notice that was issued in September 2018. The Tenants stated their belief that the Landlords did not want to accept any money from them as they did not want the 10 Day Notice cancelled.

The Landlords also applied for compensation for gas and hydro bills from August 2018 until October. They stated that the arrangement was that the Tenants would pay 75% of each utility bill and the other tenants on the residential property would pay the remaining 25%.

The Landlord stated that this was a verbal agreement and was not written on the tenancy agreement. The Landlords submitted six hydro and gas bills and claimed a total of \$699.11 which they stated was calculated as 75% of the utility bills.

The Tenants testified that they had an arrangement to pay 70% of the hydro and gas bills and that the other tenants in a separate rental unit would pay the remaining 30%. The Tenants confirmed that they reviewed the utility bills submitted by the Landlord as evidence and do not dispute that they were responsible for those bills. However, they did dispute the percentage that the Landlord claimed they were to pay.

As with the rent, the Tenants stated that once the second 10 Day Notice was served, the Landlords would not communicate with them and would not accept any money towards the utility bills. The Tenants also stated that they did not request the return of the security deposit as they thought that money could be used by the Landlord for the unpaid utility bills.

The Landlords have also claimed \$90.09 for door locks, light bulbs and broken blinds. They stated that they attended the home at 1:00 pm on October 20, 2018 and the Tenants had already moved out and left the door open and the key inside. They stated that they had not arranged a move-out inspection as they were unsure when the Tenants would be moving out.

The Landlords noted that there was garbage and other items left behind and as the key was not working properly they had to replace the locks to the rental unit. The Landlords submitted a receipt from a hardware store dated October 24, 2018 in the amount of \$56.49 and another receipt from the same day in the amount of \$33.60. The Landlord stated that many lightbulbs were missing in the rental unit that they needed to replace.

The Tenants stated that they left by 1:00 pm on October 20, 2018 as agreed upon during a previous dispute resolution proceeding. As such, they stated that the Landlords knew when they would be moving and did not arrange a move-out inspection. The Tenants stated that a bit of garbage was left behind, but that the rental unit was left clean. They also stated that the blinds were old and cheap, which caused one blind to become damaged through normal use.

### Analysis

Regarding the Landlords' claims for unpaid rent, I refer to Section 26 of the *Act* which states that rent must be paid when due as stated in the tenancy agreement. The parties agreed that rent in the amount of \$1,575.00 was due on the first day of each month which was also confirmed by the tenancy agreement included as evidence.

Although the parties were not in agreement as to whether the Tenants attempted to pay rent for September and October 2018 or whether rent was refused by the Landlords, I find that the parties agreed that rent for these two months was not paid. As such, I find that the Tenants owe rent as due on September 1, 2018 and October 1, 2018 and the Landlord is entitled to an amount of \$3,150.00 for these two months.

As for \$650.00 owing for August 2018, the parties were not in agreement as to whether this was paid. When parties to a dispute resolution proceeding provide conflicting testimony, it is up to the party with the burden of proof to submit sufficient evidence over and above their testimony to establish their claim. As stated by rule 6.6 of the *Rules of Procedure*, the party making the claim has the burden of proof, which in this case is the Landlord.

While the Landlord submitted a receipt showing a payment of \$500.00 on August 17, 2018 there was no further evidence regarding August 2018 rent, such as proof of the additional amount paid or the 10 Day Notice showing that rent was not paid in full. Therefore, I find that the Landlord did not meet the burden of proof to establish that an amount of rent remains outstanding for August 2018. As I am not satisfied that the Tenants still owe \$650.00 for rent for August 2018, I decline to award this amount.

Regarding the utility claims, the parties were in agreement that the Tenants were responsible for a percentage of the utility bills but were not in agreement as to the percentage amount. The Landlords submitted a copy of the utility bills in question and

the Tenants stated that they did not dispute that they are responsible for paying a portion of these bills.

However, the Landlord did not submit evidence to establish that there was an agreement for the Tenants to pay 75% of the utility bills. As such, I accept the Tenants' testimony that they were responsible for paying 70% and award the Landlords this amount. The utility bills submitted into evidence were totalled and 70% was calculated as \$653.07.

Regarding the Landlords claims for locks, light bulbs and blind replacement, while they submitted evidence showing purchases made totally \$90.09, I am not satisfied that the Tenants owe this amount. As stated in Section 7(1) of the *Act*, if a party does not comply with the *Act*, the other party must be compensated for any losses. Section 37(2) of the *Act* states that a rental unit must be left reasonably clean and undamaged.

However, I do not have sufficient evidence from the Landlords to establish that the Tenants breached the *Act* by leaving the unit unclean or damaged. There were no photos and no Condition Inspection Report that would establish the condition of the rental unit at the start and end of the tenancy. As such, I am not satisfied that the Tenants are responsible for damage to the blinds and locks or for the missing lightbulbs and I decline to award compensation.

As the Landlords were partially successful in their application, pursuant to Section 72 of the *Act*, they are awarded the recovery of the filing fee in the amount of \$100.00. The Landlord may retain the security deposit towards the compensation owed.

Pursuant to Section 67 of the *Act*, the Landlord is awarded a Monetary Order in the amount outlined below:

September 2018	\$1,575.00
October 2018	\$1,575.00
70% of gas and hydro bills	\$653.07
Filing fee	\$100.00
<i>Less security deposit</i>	<i>(\$750.00)</i>
<b>Total owing to Landlord</b>	<b>\$3,153.07</b>

### Conclusion

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlords a **Monetary Order** in the amount of **\$3,153.07**. The Landlords are provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant

fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: February 22, 2019

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Residential Tenancy Branch