



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNR, MNSD, FFL

### Introduction

On February 2, 2019, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking money owed or compensation for damage or loss; a monetary order for unpaid rent; and to keep the security deposit.

The matter was set for a conference call hearing. The Landlord and Tenants attended the teleconference hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the 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

- Is the Landlord entitled to a monetary order to recover unpaid rent?
- Is the Landlord entitled to money owed or other compensation for damage or loss?
- Can the Landlord keep the security deposit towards their claims?
- Is the Landlord entitled to recover the cost of the filing fee?

### Background and Evidence

The Landlord and Tenants testified that the tenancy began on August 1, 2018, as a one year fixed term tenancy. Rent in the amount of \$2,200.00 was to be paid to the Landlord by the first day of each month. The Tenants paid the Landlord a security

deposit of \$1,100.00. Rent does not include the cost for electricity or heat. The Landlord provided a copy of the tenancy agreement.

The Landlord testified that the Tenants broke the fixed term tenancy agreement by moving out of the rental unit on December 29, 2018, prior to the end of the fixed term agreement.

The Landlord is seeking compensation as follows:

Loss of Rent for January 2019	\$2,200.00
Unpaid Hydro Bills	\$660.94
Carpet Cleaning	\$161.95

Loss of Rent \$2,200.00

The Landlord testified that the Tenants moved out of the rental unit without any notice and prior to the end of the fixed term tenancy agreement. The Landlord testified that on January 7, 2019, the Tenants notified him that they had moved out of the rental unit.

The Landlord testified that the Tenants did not pay the rent owing under the tenancy agreement for the month of January 2019. The Landlord suffered a loss of rent and is seeking to recover the rent of \$2,200.00. The Landlord testified that he did not rent the unit out to new Tenants and received no rent for any part of January 2019.

In reply the Tenants testified that they moved out of the rental unit on December 27, 2018, and that on January 7, 2019, they notified the Landlord via email that they had moved out.

The Tenant testified that she lost her job on December 23, 2018 and they could not cover the rent, so they moved out.

Unpaid Hydro Bills \$660.94

The Landlord testified that the tenancy agreement requires the Tenant to pay for hydro-electricity costs. The Landlord testified that the hydro utility is in the Landlords name and the Tenants are to pay the hydro costs when he presents them with the bill.

The Landlord testified that he got busy and he never got around to providing the Tenants with the hydro bills and requesting payment during the tenancy.

The Landlord is seeking to recover the costs for hydro as follows:

BC Hydro	July and August 2018	\$196.38
BC Hydro	Sept and Oct 2018	\$247.91
BC Hydro	Nov and Dec 2018	\$216.65

### Hydro Claims

The Landlord provided a hydro bill for the billing period of July and August. The Landlord is seeking compensation for the first 13 days of August 2018. The Landlord submitted that he wants \$3.16 per day for 13 days of use. The Landlord is claiming the amount of \$41.08.

In reply, the Tenants testified that the Landlord never provided them with the hydro bills during the tenancy. The Tenants testified that while they had some stuff in the unit; they did not begin living in the unit until August 15, 2018. The Tenants submitted that the previous occupants are responsible for the majority of the hydro use for this period as there were many occupants living in the unit and using hydro during this bill cycle.

During the hearing the parties agreed that the Tenants would pay \$25.00 for the use of hydro for August 2018.

The Landlord provided a hydro bill for the billing period of September and October 2018. The Landlord is seeking the amount of \$216.65 for hydro costs.

In reply, the Tenants agreed that they are responsible to pay the Landlord the amount of \$216.65 for September and October 2018, hydro costs.

The Landlord is looking to recover the hydro costs for November and December 2018. The Landlord failed to provide a copy of the hydro bill for this period. The Landlord's testimony was confusing as the Landlord referred to a hydro bill from May and June 2018 which is from a period prior to the start of the Tenants tenancy. The Tenants testified that they have not received a hydro bill from the Landlord for the months of November and December 2018.

### Carpet Cleaning \$161.95

The Landlord testified that the Tenants failed to clean the carpets when they moved out of the rental unit. The Landlord testified that there were stains on the carpet. The Landlord's agent testified that there were no stains; however, the Tenants failed to have the carpet cleaned at the end of the tenancy.

When asked if there was a term or condition that required that the carpets be shampooed or professionally cleaned at the end of tenancy, the Landlord testified that there is no term in the tenancy agreement requiring the cleaning of the carpet. The Landlord did not provide a photograph showing the condition of the carpet at the end of the tenancy.

The Landlord provided a copy of an invoice dated January 16, 2019 for the cost of the carpet cleaning in the amount of \$161.95.

In reply the Tenants testified that they do not agree with the Landlords claim. The Tenants testified that they did steam clean the carpet at the end of the tenancy. The Tenants testified that the carpets had pre-existing stains that were present at the start of the tenancy. The Tenants testified that the Landlord failed to perform a move in inspection of the unit with them. The Tenants provided photographs of the condition of the rental unit at the end of the tenancy including photographs showing the carpets.

The Landlord confirmed that he did not perform a move in condition inspection at the start of the tenancy.

### Security Deposit

The Landlord testified that he received the Tenants forwarding address on January 14, 2019. On February 2, 2019, the Landlord applied for dispute resolution and made a claim against the security deposit.

The Landlord testified that there was no agreement from the Tenants that he could retain any amount of the security deposit.

### Analysis

Sections 23 and 35 of the Act states that a Landlord and Tenant together must inspect the condition of the rental unit on the day the Tenant is entitled to possession of the rental unit, and at the end of the tenancy before a new tenant begins to occupy the rental unit. Both the Landlord and Tenant must sign the condition inspection report and the Landlord must give the Tenant a copy of that report in accordance with the regulations. Section 24 of the Act provides that the right of a Landlord to claim against a security deposit is extinguished if the Landlord does not arrange for an inspection and complete a condition inspection report.

Section 38 (1) of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the Landlord receives the Tenant's forwarding address in writing, the Landlord must repay any security deposit or pet damage deposit to the Tenant with interest calculated in accordance with the regulations, or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 38(6) of the Act provides that if a landlord does not comply with subsection (1), the landlord

*(a) may not make a claim against the security deposit or any pet damage deposit, and*

*(b) must pay the tenant double the amount of the security deposit*

### Security Deposit

I find that the Landlord failed to perform a move in and move out inspection with the Tenant as required by the Act. I find that the Landlords right to claim against the security deposit is extinguished.

I find that the Tenants provided their forwarding address to the Landlords on January 14, 2019. I find that the Landlord failed to apply to keep the security deposit within 15 days of receiving the Tenants forwarding address. I find that there was no agreement from the Tenants that the Landlords could retain the security deposit.

I find that the Landlord's breached section 38 of the Act. Pursuant to section 38(6) of the Act, the Landlord must pay the Tenants double the amount of the security deposit.

I find that the amount of the deposit being held by the Landlord in trust is doubled to be the amount of \$2,200.00.

Loss of Rent \$2,200.00

The Residential Tenancy Branch Policy Guideline #3 Claims for Rent and Damages for Loss of Rent deals with situations where a Landlord seeks to hold a Tenant liable for loss of rent after the end of a tenancy agreement. The Guideline provides:

*The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy.*

*In all cases the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent.*

I find that the Tenants ended the fixed term tenancy early and they are therefore responsible to pay the rent under the tenancy agreement for the month of January 2019.

I find that the Landlord complied with his duty to mitigate the loss by attempting to re-rent the property as soon as the Tenant moved out.

I award the Landlord the amount of \$2,200.00 for the loss of rent that the Landlord suffered for the month of January 2019.

#### Unpaid Hydro Bills

I award the Landlord the following amounts for hydro costs:

- \$25.00 for August 2018.
- \$216.65 for September /October 2018

The Landlord failed to provide a hydro bill for November and December 2018, and did not appear to know the amount of the bill. The Landlord provided insufficient evidence to prove this claim and the claim is dismissed without leave to reapply.

#### Carpet Cleaning

Residential Tenancy Policy Guideline #1 Responsibility for Residential Premises provides that a Tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the Tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year.

The Landlord failed to conduct a move in condition inspection and prepare an inspection report at the start of the tenancy. There is insufficient evidence from the Landlord to establish the condition of the carpets at the start of the tenancy. I find that the tenancy agreement does not require the Tenants to have the carpet cleaned at the end of the tenancy.

I find that the tenancy continued for approximately five months and the requirement for a Tenant to have the carpets cleaned after a tenancy of one year does not apply.

The Landlord's claim to recover the cost of carpet cleaning is dismissed without leave to reapply.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenants to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I find that the Landlord has established a total monetary claim of \$2,551.65 comprised of \$2200.00 for unpaid rent; \$266.65 for unpaid hydro; and the \$100.00 fee paid by the Landlord for this hearing. After setting off the security deposit of \$2,200.00 towards the claim of \$2,551.65, I find that the Landlord is entitled to a monetary order in the amount of \$351.65. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

### Conclusion

The Tenants ended the fixed term tenancy early and are responsible to pay January 2019 rent and hydro costs. The Landlord established a monetary claim in the amount of \$2,551.65.

The Landlord's right to apply against the security deposit is extinguished and the Landlord failed to repay the security deposit to the Tenants or make an application against the deposit within 15 days of receiving the Tenants forwarding address.

The security deposit being held by the Landlord in trust is doubled to be the amount of \$2,200.00.

After setting off the security deposit of \$2,200.00 towards the award of \$2,551.65, I find that the Landlord is entitled to a monetary order in the amount of \$351.65. I grant the Landlord a monetary order in the amount of \$351.65.

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: May 30, 2019

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Residential Tenancy Branch