



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNDC, MNSD, FF

### Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. A Monetary Order for compensation - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenants were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

### Background and Evidence

The following are undisputed facts: The tenancy started on October 1, 2018 based on a verbal agreement. At the outset of the tenancy the Landlord collected \$525.00 as a security deposit. Rent of \$1,050.00 was payable on the first day of each month with the Tenants also paying half the water, hydro and gas bills. The Parties reduced the verbal agreement into a written agreement on the same terms with a tenancy start date of December 30, 2018. The Tenants provided their forwarding address to the Landlord on March 4, 2019.

The Landlord states that in January 2019 the Tenants gave notice to move out of the unit on March 2, 2019 and that the Tenants moved out on that date. The Landlord claims \$67.74 for the two days that the Tenants occupied the unit in March 2019. The Tenants state that they moved out of the unit on March 1, 2019 but did not return the keys that date. The Tenants state that they intended to return the keys the next day at the move-out inspection. The Tenants state that when they returned to the unit at 8:25 a.m. the locks to the unit had been changed. The Tenants submitted a copy of a text sent to the Landlord about the lock change dated March 2, 2019 with the time 8:25 a.m. The Landlord states that the locks were not changed until around March 4, 2019. The Tenant states that they provided a photo taken through a window of the unit showing the Landlord's tools and lock on the cupboard inside the unit.

The Landlord states that the Tenant's portion of the water bill for the period October to November 2018 was a total of \$63.42 and that the Tenants only paid a portion of this amount. The Landlord claims the remaining amount of \$31.71. The Landlord provides a bill for this claim. The Tenants state that they paid the water amount that was requested by the Landlord of \$31.70. The Tenants state that the Landlord never provided them with any bills during the tenancy and only sent them texts for the amounts. The Tenants state that they provided texts for the Landlord's request for the water bill payment and a copy of their e-transfer dated December 16, 2018 showing their payment. The Landlord states that mistakes were made in the water bill calculations and that the Landlord verbally informed the Tenants of the outstanding amount of \$31.71. The Tenant states that there was never any oral agreement to pay any other amount than was paid.

The Landlord states that the Tenants' portion of the gas bills are unpaid and claims \$90.46 for the period January 4 to January 31, 2019 and \$121.69 for the period February 1 to March 2, 2019. The Landlord states that the amounts unpaid were calculated on a per diem basis by the Landlord and the Landlord claims these amounts. The Tenants state that the Landlord failed to supply adequate heat to their unit from

December 2018 onward and that they therefore should not have to pay the gas bills since they did not have sufficient heat. The Tenants state that they had no control over their heat and that a thermometer in their unit consistently read between 13 and 14 degrees Celsius. The Tenants provide a photo of a thermometer. The Tenants state that they repeatedly texted the Landlord to turn up the heat. The Tenants state that the Landlord never inspected their unit for the lack of heat or otherwise remedied the inconsistent heating to the unit. The Tenants state that there was only once occasion when the thermometer registered 30 degrees Celsius.

The Landlord states that the heat was controlled in the upper unit, occupied by the Landlord, and was set at 24 degrees Celsius. The Landlord agrees that the Tenants kept telling the Landlord that their unit was cold and states that when the Tenants did ask for more heat the Landlord increased the heat. The Landlord states that the Tenants' unit was also checked multiple times but that the Tenants never showed the Landlord a thermostat. The Landlord states that the Tenants were also provided with a small space heater. The Tenants state that no space heater was provided to them from the Landlord and that the Landlord never checked their unit. The Tenants state that they never sought any remedy from the Residential Tenancy Branch (the "RTB") as matters became difficult between the Parties with both Parties calling the police on different occasions and that the police suggested the Tenants not be concerned about the utilities since they were moving.

The Landlord states that the Tenants failed to pay their hydro costs and the Landlord claims \$75.98. The Landlord states that prior to the signing of the written tenancy agreement the Tenants always paid their utilities. The Tenant states that they never received any hydro bill until the Landlord provided it for these proceedings. The Tenants state that they did not undertake any calculations to confirm or deny the Landlord's calculations for any of the bills provided by the Landlord for this dispute.

### Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. Rent is payable while a tenant occupies the rental unit. Given the Tenant's March 2, 2019 text provided as evidence I find on a balance of probabilities that the Landlord had changed the locks after the Tenants moved out of the unit on March 1, 2019. As the Tenants could not have occupied the unit on March 2, 2019 due to the lock change I find on a balance of probabilities that the Landlord has only substantiated rent for one day of **\$33.87** (calculated on a per diem basis \$1,050.00/31)

Given the Landlord's copy of the water bills for the period October 2018 to March 2019 and as the Tenants gave no evidence that the Landlord's proportionate calculations were in error other than having paid an amount on December 16, 2018, I find on a balance of probabilities that the Tenants used the water utility as set out in the bills and that the Landlord is owed **\$31.71** and **\$78.05** after the deduction of the amount paid by the Tenants on December 16, 2018.

While I accept that the Landlord did not provide the Tenants with any space heater and I accept that the Tenants were inconvenienced by having to make repeated requests for sufficient heat, given the Landlord's evidence that the heat was increased when asked and given no evidence to support that the heat was not increased when requested, I accept that the Landlord increased the heat sufficiently when asked to do so. I also consider that the Tenants made no effort to seek an order from the RTB for repair of the heating control in the unit. Given the heat bills for the period January 4 to March 2, 2019 and as the Tenants provided no evidence that the Landlord's proportionate calculations were in error, I find on a balance of probabilities that the Landlord has substantiated its claims to **\$90.46** and **\$121.69**.

Given the hydro bills provided as evidence for the Landlord's hydro claim and as the Tenants provided no evidence that the Landlord's proportionate calculations were in

error, I find on a balance of probabilities that the Landlord has substantiated its claim to **\$75.98**.

As the Landlord has been primarily successful with its claims I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$531.76**.

Deducting the security deposit plus zero interest of **\$525.00** from this entitlement leaves **\$6.76** owed to the Landlord.

### Conclusion

I Order the Landlord to retain the security deposit plus interest of \$525.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the remaining **\$6.76**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the RTB under Section 9.1(1) of the Act.

Dated: June 10, 2019

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Residential Tenancy Branch