



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      FFT, OLC

### Introduction

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

- an order for the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application pursuant to section 72.

The tenants attended the hearing. The tenants had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions.

The landlords did not attend the hearing. I kept the teleconference line open from the scheduled hearing time for the duration of the hearing to allow the landlords the opportunity to call. The teleconference system indicated only the tenant and I had called into the hearing. I confirmed the correct participant code was provided to the landlords.

The tenants testified that the tenants served the landlords with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on June 24, 2019 and deemed received by the landlords five days later, on June 29, 2019, under section 90 of the *Act*. The tenants provided the Canada Post tracking number in support of service referenced on the first page of the decision. Based on the undisputed testimony of the tenants, I find the tenants served the landlords with the documents pursuant to section 89 of the *Act*.

### Issue(s) to be Decided

Are the tenants entitled an order for the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62?

Are the tenants entitled to recover the filing fee for this application pursuant to section 72?

### Background and Evidence

The tenants testified that the hot water tank in their rental unit malfunctioned causing it to constantly run which lead to excessively high electric utility statements. The tenants discovered that the hot water tank was malfunctioning on February 24, 2019 but they testified that the tank had been malfunctioning for an unknown amount of time before they noticed.

The tenants reported the hot water tank problems to the landlords on February 24, 2019 and the landlords repaired the tank the same day. The tenants contacted the hot water tank manufacturer to make a warranty claim but they were advised that the warranty had expired.

The tenants requested compensation for their excessive electric utility statements from the landlords. However, the landlords did not provide monetary compensation.

The tenants presented an electric utility statement dated March 18, 2019, for billing period from December 20, 2018 to February 20, 2019 showing billing of \$1,046.85. The statement also included a graph indicating that the tenants used approximately double the amount of kilowatt hours of electricity in this period as compared to the same period as last year.

The tenants also presented an annual billing statement that showed that the tenants paid \$457.72 in electric utilities for the comparable time period in the previous year on February 22, 2018.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. The purpose of

compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, the onus is on the tenants to prove entitlement to a claim for a monetary award. 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.

Based upon the tenants' undisputed testimony and the evidence submitted, I am satisfied that the tenants have presented sufficient evidence to prove on the balance of probabilities that they sustained a monetary loss of excessive electric utility charges as a result of a malfunction of the hot water tank.

Section 32 of the *Act* says that landlords must provide and maintain residential property in a state of decoration and repair that makes it suitable for occupation by a tenants. I find that this section requires that the landlords maintain the hot water tank in a functioning manner. I find that the landlords have failed to do so which caused the tenants' excessive electric utility charges.

I find that the tenants' electric utility charges of \$1,046.85 for billing period from December 20, 2018 to February 20, 2019 showing billing of was excessive as a result of the malfunctioning hot water tank. Furthermore, I find that the normal electric usage for this time period would have been \$457.72, based on the tenants' electric utilities charged for the comparable time period in the previous year which was billed on February 22, 2018. Accordingly, I find that tenants have incurred a loss of \$589.13 (\$1,046.85 less \$457.72) from the malfunctioning hot water tank. Accordingly, I grant the tenants a monetary order of \$589.13.

Since the tenants have prevailed in this matter, the tenants' application for reimbursement of the filing fee is granted pursuant to section 72.

According, I grant the tenants a monetary award of \$689.13, calculate as follows:

<u>Item</u>	<u>Amount</u>
Compensation for excessive utility charges	\$589.13
Reimbursement of the filing fee	\$100.00
Total	\$689.13

To satisfy this monetary award, the tenants may deduct sum of \$689.13 from **ONE** future rent payment.

#### Conclusion

I grant the tenants a monetary award of \$689.13. To satisfy this monetary award, the tenants may deduct sum of \$689.13 from **ONE** future rent payment.

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: September 30, 2019

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Residential Tenancy Branch