



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL, FFL

### Introduction

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

- a Monetary Order for unpaid rent and utilities, pursuant to sections 26 and 67; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:52 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. The landlords attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlords and I were the only ones who had called into this teleconference.

The landlords testified that they served the tenant with their application for dispute resolution via registered mail and that it was picked up from the Canada Post office on September 11, 2019. The landlords entered into evidence a delivery confirmation report from Canada Post to confirm the above service. I find that service was effected on the tenant on September 11, 2019, in accordance with section 89 of the *Act*.

### Issues to be Decided

1. Are the landlords entitled to a Monetary Order for unpaid rent and utilities, pursuant to sections 26 and 67 of the *Act*?
2. Are the landlords entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlords, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the landlords' claims and my findings are set out below.

The landlords testified to the following facts. The landlords purchased a house from the tenant and took possession of the house on May 16, 2019. The house has an upper suite and a basement suite and the seller of the house asked to become a tenant of the basement suite (the "subject rental property") after the sale completed. The landlord and the tenant entered into a month to month tenancy agreement starting May 16, 2019. Monthly rent in the amount of \$1,000.00 was payable on the 16th day of each month. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The tenancy agreement states that electricity and natural gas are not included in the rent. The landlords testified that the house has a single electricity and natural gas meter and that they did not directly speak with the tenant about what proportion of the electricity and natural gas bills she is responsible for. The landlords testified that the tenant's reasonability to pay for her utilities was mentioned to the real estate agent involved with the sale of the property, but not explicitly stated. The tenancy agreement is silent on what percentage of the utilities the tenant is responsible for.

The landlords testified that two people moved into the upper suite on June 8, 2019 and that prior to the upper tenants moving in, the utilities were not on in the upper suite.

The landlords testified to the following facts. The tenant paid the landlord \$1,500.00 on June 3, 2019 for May and June 2019's rent. On June 7, 2019 the tenant emailed the landlords notice to end her tenancy effective June 30, 2019.

The landlords are seeking \$1,000.00 for July 2019's rent because the tenant did not provide one full month's notice.

The landlords are seeking the tenant to pay the full hydro and natural gas bills from May 16-June 7, 2019 and 1/3 of the hydro and natural gas bills from June 8- June 30, 2019. The landlords testified that they are only seeking 1/3 of the hydro and natural gas bills after June 8, 2019 because as of that date, three people were living in the subject rental house and they are only seeking the tenant to pay her portion. The total amount sought by the landlords is \$140.34.

The landlords entered into evidence a hydro bill from May 16, 2019 to June 5, 2019 in the amount of \$63.05. The landlords testified that they are not seeking the account set up fees in the amount of \$13.02 that are included on that bill.  $463.05 - \$13.02 = \$50.03$ .

The landlords entered into evidence daily consumption data including the cost of consumption from June 6 to August 6, 2019. The landlords testified that at the time of filing they did not have a bill for this time period and while they have since received one, they did not enter it into evidence.

The landlords testified that the consumption charges from June 6-June 30, 2019 totals \$93.67.

The landlords entered into evidence the following calculation:

Consumption amount from June 6-June 30, 2019	\$93.67
Basic charge 25 days @ \$0.2090 per day	\$5.23
Customer Crisis fund 25 days @ \$0.0082 per day	\$0.21
Subtotal	\$99.11
GST 5% on \$99.11	\$4.95
Total	\$104.06
Divided by 3 to account for upstairs tenants who moved in June 8	<b>\$34.69</b>

The landlords testified that the basic charge rate, customer crisis fund amount and GST data were pulled from the previous bill.

The landlords entered into evidence a natural gas bill from May 16, 2019 to June 3, 2019 in the amount of \$46.37. The landlords testified that they are not seeking to collect the application fee which is on that bill in the amount of \$15.75.  $\$46.37 - \$15.00 = \$30.62$ .

The landlords entered into evidence a natural gas bill from June 3, 2019 to July 3, 2019 in the amount of \$86.61 and are seeking \$25.00 from the tenant pursuant to the following calculation:

June 3- July 3 natural gas bill	\$86.81
Divided by 3 to account for upstairs tenants who moved in June 8	\$28.87
Less discount for July 1-3	-\$3.87
<b>Total</b>	<b>\$25.00</b>

The landlords testified that they could not recall how the \$3.87 discount was calculated.

### Analysis

Section 45(1) of the *Act* states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice, and
- (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Pursuant to section 45(1) of the *Act*, I find that the earliest date the tenant was permitted to end the tenancy with a notice to end tenancy delivered on June 7, 2019, was July 15, 2019 which is the day before the day in the month that rent is payable under the tenancy agreement. Therefore, I find that the tenant owes the landlords \$500.00 in unpaid rent for the period of July 1-15, 2019.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due.

In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The tenancy agreement states that electricity and natural gas are not included in the rent; however, it is silent on what percentage of the electricity the tenant is required to pay when the upper suite is tenanted and when it is not tenanted. I therefore find that the landlords have not proved what percentage of the bill the tenant was required to pay and so have not proved what loss or damaged resulted from the tenant's non-compliance with the tenancy agreement.

Residential Tenancy Policy Guideline 16 states that nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right. I find that the landlords have proved that there has been an infraction of their legal right to be compensated in some amount for electricity and natural gas. I find that the landlords are entitled to nominal damages for the tenant's use of electricity and natural gas, for the duration of her tenancy in the amount of \$120.00.

As the landlords were successful in their application, I find that they are entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

### Conclusion

I issue a Monetary Order to the landlords under the following terms:

Item	Amount
Rent for July 1-15, 2019	\$500.00
Nominal damages	\$120.00
Filing Fee	\$100.00
<b>TOTAL</b>	<b>\$720.00</b>

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 landlords 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: October 22, 2019