



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PETER WALL MASION AND ESTATES and  
[tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      MNR, MNDC, MNSD, FF

### Introduction

The landlord and the tenant convened this hearing in response to applications.

The landlord's application filed on May 3, 2019, is seeking orders as follows:

1. For a monetary order for money owed;
2. To keep all or part of the security deposit; and
3. To recover the cost of filing the application.

The tenant's application filed on July 2, 2019, is seeking orders as follows:

1. For a monetary for money owed; and
2. To recover the cost of filing the application.

This matter commenced on October 8, 2019 and was adjourned. The interim decision should be read in conjunction with this decision.

### Preliminary and procedural matters

At the outset of the hearing, counsel submitted that the style of cause should be amended to add the doing business as PWME name to the landlord. Therefore, I have amended the style of cause to reflect the doing business as to the landlord's name. I find this amendment is not prejudicial to either party.

The security deposit was returned to the tenant at the end of the tenancy. Therefore, I need not consider the issue of the security deposit.

Issues to be Decided

Is the tenant entitled to a monetary order for money owed?

Is the landlord entitled to a monetary order for money owed?

Background and Evidence

The parties agreed that they entered into a fixed term tenancy which began on February 1, 2019 and was to expire on January 31, 2020. The tenant moved into the premise on February 8, 2019. Rent in the amount of \$2,450.00 was payable on the first of each month. The tenant paid a security deposit of \$1,225.00. The tenancy ended on April 30, 2019.

Tenant's application

The tenant claims as follows:

a.	Compensation for lack of heat for 3 months	\$ 2,940.00
b.	Compensation for space heater & blankets	\$ 251.97
c.	Compensation for technician visit	\$ 198.45
d.	Recover inflated electrical cost	\$ 117.15
e.	Compensation for lack of hot water for 1.5 month	\$ 200.00
f.	Moving cost and cleaning cost related to moving out	\$ 473.31
g.	Aggravated damages - stress	\$ 5,000.00
h.	Aggravated damages - loss of time	\$ 2,000.00
i.	Mailing expenses	\$ 42.46
j.	Filing fee	\$ 100.00
	Total claimed	\$11,758.35

Compensation for lack of heat for 3 months

The tenant testified that on February 13, 2019, five days after they moved into the premise that the heating system stopped working properly. The tenant stated that the AC unit was rattling, had a burning plastic smell, and was not blowing heat.

The tenant testified that they provided two readings of the thermostat to show what the temperature was in the rental unit, which shows on March 5, 2019 the unit was heated

to 19.5 Celsius and April 11, 2019 the unit was heated to 19.7 Celsius. The tenant stated that does not comply with the municipal bylaws as the landlord is required to provide heat at the temperature of 22 Celsius.

Counsel submits that on March 5, 2019, when the landlord and the technician attended the heating system was operating and the a fan was replaced; however, at that time the rental unit had a temperature of 24.5 Celsius and the technician had to explain to the tenant how to work the thermostat as the system would not come on if the thermostat was within 1 degree of the setting.

Counsel submits that on March 14, 2019, when the landlord attended the unit the heat was turned off; however, the heat was at 22.7 Celsius and they set the thermostat to manual and achieved a reading of 24.5 Celsius.

The tenant argued that the heat reading on March 14, 2019, was obtained only because the landlord and technician were touching the thermostat and standing by it, and their body heat would have increased the heat.

#### Compensation for space heater & blankets

The tenant testified that they had to purchase a space heater because one of the space heaters the landlord gave them to use was broken and they were told that they did not have any other heaters to provide. The tenant stated that the heater that was remaining was very loud and impossible to sleep and they were forced to purchase a new heater, which was very efficient and quiet. The tenant seeks to recover the cost of \$119.99. Filed in evidence is a copy of the receipt dated March 5, 2019.

The tenant testified that February 2019, was an extremely cold month and the external temperature was below zero. The tenant stated that they had to purchase blankets because of the rental unit being so cold. The tenant seeks to recover the cost of \$111.99. Filed in evidence is a receipt dated March 17, 2019.

The landlord testified that the tenant was given two space heaters. The landlord stated that the tenant returned one heater and they were told that they do not need another as they had already purchased a new heater.

#### Compensation for technician visit

The tenant testified that they contacted their own repair company to inspect the AC unit on March 23, 2019, and they were told that the AC is unsafe to use. The tenant stated that they did not share a copy of the recommendation with the landlord. The tenant stated that they should be entitled to recover the cost they paid in the amount of \$198.45. Filed in evidence is a receipt.

Counsel submits that there was no reason for the tenant to obtain an inspection.

Recover inflated electrical cost

The tenant testified that they should be entitled to recover the cost of the inflated electrical costs for using space heaters. The tenant stated that they do not have any previous invoices as they were not in the rental unit; however, should be entitled to recover 75% of the utilities in the amount of \$117.15. Filed in evidence are copies of the tenant's utility invoices.

Counsel submits the heating system was working and it was the tenant's choice to use space heater, while the landlord was waiting for the part to arrive.

Compensation for lack of hot water for 1.5 month

The tenant testified that for a period of time they did not have hot water and that the water pressure would fluctuate. The tenant stated that they informed the landlord of this matter on February 11, 2019. The tenant seeks to recover 20% of the rent for this period of time.

The tenant testified that during the peak hours the water would be lukewarm when the faucet was set on the medium setting or cooler water would gush or you would get a gush of scolded water or the water pressure would disappear. The tenant testified that when the landlord's technician tested the water it was only at 46 Celsius and not at the municipality's requirement of a minimum of 49 Celsius.

The tenant testified that they were told that there was a problem with one of the boilers and that it was being worked on. The tenant stated that it was not until the middle of March 2019, that the water was stable.

The landlord testified that the building is 51 stories and that they have two boilers for the building. The landlord stated there was always hot water for the building and it would be impossible for the tenant to be the only person without hot water, as they

received no other complaints. The landlord stated that they were having temporary issues with one of the boilers; however, that was fixed on March 6, 2019.

Moving cost and cleaning cost related to moving out

The tenant testified that they ended the tenancy due to a breach of a material term of the tenancy and they should be entitled to moving cost and cleaning cost related to the ending of the tenancy.

Counsel submits the landlord is not responsible for the tenant's cost of moving or cleaning as it was the tenant who ended the tenancy.

Aggravated damages - stress

The tenant submits they should be entitled to aggravated damages for stress, loss of quality of life of dealing with the issues during their tenancy and the having to move out of the rental unit.

Counsel submits the tenant's claim does not warrant aggravated damages.

Aggravated damages - loss of time

The tenant submits that they should be entitled to compensation for loss of time, work days and productivity.

Counsel submits the tenant's claim does not warrant compensation for loss of time

Landlord's application

The landlord claims as follows:

a.	Recover cost for breaking lease	\$2,450.00
b.	Filing fee	\$ 100.00
	<b>Total claimed</b>	<b>\$2,550.00</b>

Counsel submits the tenant breached the fixed term tenancy agreement and as a result the landlord is entitled to recover the cost as agreed upon in clause #3(i) of the agreement.

The tenant submits that they had a right to end the tenancy for a breach of a material term of the tenancy agreement.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, both parties have the burden of proof to prove their respective claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

### Tenant's application

The tenant is claiming the return of 40% of their rent for the lack of heat in the rental unit for three months. The tenant has provided two heat reading that were taken during the three months to support they did not have enough heat.

The readings were between 19.5 and 19.7 Celsius. The landlord has provided evidence that when they attended the rental unit that the heat readings were between 22.7 and 24.5 Celsius.

While I accept there may have been an issue with the AC unit and that repairs were in the process, and both parties have provided evidence related to that issue. However, that is not the issue that I need to decide. The issue I must decide is whether the tenant had a lack of heat for three months.

In this case, I accept the reading of both parties that the heat was between 19.5 and 24.5. I do not find these readings support that the tenant did not have adequate heat during their tenancy. I do not accept the tenant's evidence that the landlord only

obtained a higher reading by simply touching and standing by the thermostat, would significantly increase the reading of the heat.

As the onus is on the tenant to prove they did not have adequate heat for the three months they are claiming, I find without further evidence, such as regular readings through the three-month period that they have failed to meet the burden of proof. Therefore, I dismiss this portion of the tenant's claim.

#### Compensation for space heater & blankets

I accept the evidence of the tenant that they purchased a space heater; however, the tenant was provided two space heaters by the landlord. While I accept one space heater was returned, and the remaining was noisy. I find the tenant has not suffered a loss as they still have the heater for future use, or they could sell the heater to recover the cost. Therefore, I dismiss this portion of the tenant's claim.

I accept the evidence of the tenant that they purchased bedding; however, I am not satisfied that this was due to a lack of heat. Further, I do not find the tenant has suffered a loss as they have the bedding to use. Therefore, I dismiss this portion of the tenant's claim.

#### Compensation for technician visit

The tenant seeks to recover the cost of a technician that they paid to inspect the AC unit. However, the landlord had already had the AC unit inspected and was working to make the necessary repairs. The tenant did not share their report with the landlord. I find there was no requirement for the tenant to have hired an AC person to attend the rental unit, that was a personal choice they made and not do to a breach of the Act by the landlord. Therefore, I dismiss this portion of the tenant's claim.

#### recover inflated electrical cost

The tenant seeks to recover the cost of 75% of the electrical cost for using space heaters to heat the premise. However, I am not satisfied that the heating system was not operational.

Further, even if the tenant incurred costs, I cannot determine if that amount is reasonable. While I accept the tenant does not have prior invoice to compare, there are other ways to calculate the value, such as calculation of the wattage such an appliance would use. I am not satisfied that the extra cost was 75%. I find the tenant has not met the burden of proof. Therefore, I dismiss this portion of the claim.

#### Compensation for lack of hot water for 1.5 month

In this case, I am satisfied that the tenant did not have hot water that was the minimum standard set for the municipality; however, while I can consider their guidelines the Act supersedes municipal bylaws. Municipal bylaws are enforced by the municipality to which those bylaws were created.

While I accept the tenant's evidence that one reading completed by the landlord showed the temperature of the water was at 36 Celsius and not 39 Celsius, and that there was a lack of hot water during high usage times. However, I accept the evidence of the landlord that they had issues with one of the boilers which was being repaired.

However, the tenant had warm water while the second boiler was fixed. Although this might have not been satisfactory, I find temporary inconvenience is not grounds for compensation.

Further, while the pressure of the water would vary, I also find this not unreasonable when living in such a large building as the pressure would drop when in demand and especially if one boiler was being repaired. Temporary inconvenience is not grounds for compensation.

#### Moving cost and cleaning cost related to moving out

In this case, the tenant ended the tenancy. The tenant is responsible for all cost of moving their personal belongings and cleaning the rental unit. Therefore, I dismiss this portion of the tenant's claim.

#### Aggravated damages -stress

In this case, while I accept the tenant may have been temporarily inconvenienced from have a noise in their AC unit and hot water, I find the landlord was working on the



issues of the rental unit. I find the tenant has failed to prove a violation of the Act by the landlord and as a result of that, something significant occurred. Aggravated damages are seldom award and are unjustified in this matter. Therefore, I dismiss this portion of the tenant's claim.

#### Aggravated damages - loss of time

I find the tenant is not entitled to aggravated damages for loss of time. There was no reason the tenant had to miss anytime for work as they are not required to be at the rental unit when repairs are made, while they may choose to do so, that is a personal choice and not as a result of a breach of the Act. Therefore, I dismiss this portion of the tenant's claim.

#### Mailing expenses

Each party is responsible for their own mailing costs. Therefore, I dismiss this portion of the tenant's claim.

#### Landlord's claim

The landlord is claiming the amount of \$2,450.00 for the tenant not fulfilling their obligations under the tenancy agreement, which the evidence of the tenant was the tenancy ended for a breach of a material term.

I find I do not need to consider whether the tenant had the right to end the tenancy, as the tenancy agreement states the following.

To terminate this lease prior to the expiry date on the 31<sup>st</sup> day of January 2020 the tenant will be required to pay \$2,450.00 and must give one calendar month's notice. The tenant agrees that the lease breaking sum may be deducted from the security deposit or otherwise be paid.

A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable.

I am not satisfied that the clause in the tenancy agreement is a liquidated damage, which is a genuine pre-estimate of the loss for the cost of re-renting the premise. at the time the contract was entered. There is no reference of a pre-estimate cost of renting the premise. I find the clause shown above constitutes a penalty and has no force or effect. Therefore, I dismiss the landlord's claim.

### Conclusion

The tenant's application is dismissed. The landlord's application is dismissed.

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: November 4, 2019

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Residential Tenancy Branch