



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCL-S, MNRL-S

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on August 15, 2019 (the “Application”). The Landlord sought compensation for monetary loss or other money owed, to recover unpaid rent and to keep the security deposit.

The Landlord appeared at the hearing with the Co-owner. The Tenant appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

The Tenant confirmed receipt of the hearing package. The Tenant testified that he did not receive the Landlord’s evidence. The Landlord testified that he did not serve his evidence on the Tenant. The Landlord had submitted a copy of the tenancy agreement and seven bills for utilities, an alarm and internet. I heard the parties on whether the evidence should be admitted or excluded.

I find the Landlord failed to comply with the Rules of Procedure in relation to serving his evidence on the Tenant. I admit the tenancy agreement in any event given the Tenant signed this document and is aware of it. I exclude the bills. During the hearing, the Landlord acknowledged he did not provide the bills to the Tenant previously. I find it would be prejudicial or unfair to the Tenant to consider bills he has never seen and therefore could not comment on.

The Landlord testified that he did not receive the Tenant’s evidence. The Tenant testified that he served his evidence on the Landlord by registered mail. I outlined the

Tenant's evidence for the Landlord, which includes emails between the parties. The Landlord confirmed he is not taking issue with admissibility of the emails given the nature of these documents. The emails are therefore admissible.

The security deposit had been dealt with in a previous proceeding and therefore I did not consider this aspect of the Landlord's claim. This request is dismissed without leave to re-apply.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all testimony provided and reviewed all admissible documentary evidence. I will only refer to the evidence I find relevant in this decision.

### Issues to be Decided

1. Is the Landlord entitled to compensation for monetary loss or other money owed?
2. Is the Landlord entitled to recover unpaid rent?

### Background and Evidence

I did not review the written tenancy agreement with the parties as it was reviewed during the previous proceeding and was outlined as follows:

A written tenancy agreement was submitted as evidence. The tenancy started July 01, 2018 and was for a fixed term ending June 30, 2019. The Tenants paid a security deposit of \$1,625.00. The agreement shows the Tenants paid a pet damage deposit; however, the parties agreed the Tenants did not do so. The agreement in evidence is signed by the Tenants but not the Landlords. The parties agreed the written tenancy agreement is accurate.

The written tenancy agreement indicates rent was \$3,250.00 per month due on the first day of each month. The addendum states the tenants were responsible for:

1. Natural gas bills;
2. Electricity bills;
3. Internet bills; and
4. Alarm system bills.

The parties agreed the tenancy ended April 30, 2019. There was no issue that the Tenant provided notice on March 15, 2019 ending the fixed term tenancy early.

The Landlord sought the following compensation:

Item	Description	Amount
1	Alarm bill for May and June	\$141.68
2	Internet bill for May and June	\$224.00
3	Gas bill for May and June	\$126.00
4	City utilities bill for May and June	\$99.14
5	Electricity bill for May and June	\$92.34
6	Loss of rent for May and June	\$6,500.00
	<b>TOTAL</b>	<b>\$7,183.16</b>

The parties provided the following testimony and submissions in relation to the compensation sought.

#### ***Alarm bill for May and June***

The Landlord testified as follows. The Tenant agreed to pay for this in the tenancy agreement. The Tenant should be liable for the alarm bills for May and June. The amount of the alarm bill is the same each month. A copy of the bill was not provided to the Tenant.

The Tenant testified as follows. He agrees he owed for this throughout the tenancy. He does not take issue with the amount. He acknowledges he did not pay the bills. The Landlord should have cancelled the alarm system to mitigate his loss.

In reply, the Landlord testified that he could not cancel the alarm system with the rental unit empty.

#### ***Internet bill for May and June***

The Landlord testified as follows. The Tenant agreed to pay for this in the tenancy agreement. He acknowledges he could have cancelled internet for May and June. The Tenant testified that the Landlord should have cancelled internet for May and June.

#### ***Gas and electricity bills for May and June***

The Landlord testified as follows. The Tenant agreed to pay for these in the tenancy agreement. He could not shut off the gas and electricity for two months. There are minimum fees just for having these services hooked up. For the gas, the amount sought is the minimum fee. For electricity, the amount changes month to month. Copies of bills for these were not provided to the Tenant.

The Landlord acknowledged there was no need to use gas or electricity when nobody was in the rental unit. However, the Landlord testified that the heat was left at 20 degrees and so the heat would have turned on if the temperature went below this.

The Tenant testified as follows. It does not sound like the Landlord called to see if these services could be shut off temporarily. He does not know if keeping the unit at 20 degrees was necessary for that time of year. The lower usage for May and June will “catch up” on the annual payment plan. He could have more insight into the amounts if he had the bills.

#### ***City utilities bill for May and June***

The Landlord testified as follows. This is for semi-regular costs for the rental unit. The Tenant agreed to pay for this in the tenancy agreement. The bill was not provided to the Tenant.

The Tenant testified as follows. He does not know how much water was used if nobody was in the rental unit. He does not know the nature of the billing cycles.

#### ***Loss of rent for May and June***

The Landlord testified as follows. The Tenant was aware the Landlord rented out his personal home. The Tenant was aware the Landlord was moving back in late July. When the Landlord moved out of the home, he changed insurance providers so it could be rented out as a long term rental. The insurance did not allow for short term rentals. Therefore, the Landlord could not re-rent the house for May and June. He asked people he knew if they wanted to use the rental unit. The Tenant agreed to pay rent and use the home until June. The Tenant agreed to pay utilities until June. The Landlord testified that the unit was not re-rented for May and June and he moved back at the end of July.

I asked the Landlord if he could have changed his insurance to allow for short term rentals and how much this would cost. The Landlord acknowledged he could have and

said he did not ask for a quote to do this. The Landlord testified that he did not feel it made sense to change his insurance for two months. The Landlord testified that his insurance company would not insure the house for short term rentals so he would have had to change insurance companies.

The Tenant testified as follows. He knew the Landlord was moving back to the rental unit at the end of the fixed term. It was his understanding that it would be easy for the Landlord to rent out the home for May and June. The Landlord could have hired someone to rent out the home for him. It was his understanding that the Landlord could have made more money renting the home out in the summer given the location. He gave the Landlord 45 days notice which was more than enough time to allow him to re-rent the home. The Landlord refused to re-rent the home or mitigate his loss. The Landlord could have re-rented the home with little effort.

The Tenant acknowledged breaching the tenancy agreement and *Act* by ending the fixed term tenancy early. The Tenant testified that he had no way of confirming that the rental unit was not re-rented for May and June and that he was not disputing or confirming this.

I asked the Tenant his position on the Landlord's testimony about his insurance. The Tenant referred to the emails from the Landlord and stated that he refused to do anything to mitigate his loss. The Tenant said he has no context in relation to the insurance issue.

I have reviewed the admissible documentary evidence but do not find it necessary to detail here given the testimony of the parties and issues before me.

## Analysis

Section 7(1) of the *Act* states:

7 (1) If a...tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.

(2) A landlord...who claims compensation for damage or loss that results from the [tenant's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss. [emphasis added]

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

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.

[emphasis added]

Pursuant to rule 6.6 of the Rules of Procedure, it is the Landlord as applicant who has the onus to prove the claim.

## ***Loss of rent for May and June***

Pursuant to section 45 of the *Act*, the Tenant was not permitted to end the fixed term tenancy early unless section 45(3) of the *Act* applied. There was no suggestion by the parties that section 45(3) of the *Act* applied in this matter. The Tenant acknowledged

he breached the *Act* and tenancy agreement by ending the fixed term tenancy early. I find that the Tenant did breach the *Act* and tenancy agreement.

The Landlord testified that the rental unit was not re-rented for May and June. The Tenant could not confirm this; however, the Tenant did not dispute this. I have no reason to doubt the Landlord on this point. There is no evidence before me that contradicts the Landlord on this point. I accept that the Landlord lost \$6,500.00 in rent for May and June due to the Tenant's breach.

The issue here is whether the Landlord mitigated the loss. The Tenant took the position that the Landlord did not.

Policy Guideline 5 deals with the duty to minimize loss and states in part at page one and two:

Where the landlord or tenant breaches a term of the tenancy agreement or the Residential Tenancy Act...the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss. This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided...

Efforts to minimize the loss must be "reasonable" in the circumstances. What is reasonable may vary depending on such factors as where the rental unit or site is located and the nature of the rental unit or site. The party who suffers the loss need not do everything possible to minimize the loss, or incur excessive costs in the process of mitigation.

The Legislation requires the party seeking damages to show that reasonable efforts were made to reduce or prevent the loss claimed. The arbitrator may require evidence such as receipts and estimates for repairs or advertising receipts to prove mitigation...

### **Claims for loss of rental income**

In circumstances where the tenant ends the tenancy agreement contrary to the provisions of the Legislation, the landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit or site at a reasonably economic

rent. Where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the Legislation or the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect...Where the tenant has vacated or abandoned the rental unit or site, the landlord must try to rent the rental unit or site again as soon as is practicable.

[emphasis added]

Pursuant to section 7(2) of the *Act*, the Landlord was required to take reasonable steps to mitigate the loss. As is clear from Policy Guideline 5, this includes taking steps to re-rent the unit for May and June, or some part of these months.

Given the testimony of the Landlord, I am not satisfied the Landlord took steps to re-rent the unit for May or June. The Landlord testified that he could not re-rent the unit for two months due to his insurance. I may have found this relieved the Landlord of his obligation to take steps to re-rent the unit. However, the Landlord did not submit documentary evidence to support his position that his insurance prohibited short term rentals. Nor did the Landlord submit documentary evidence showing what “short term rentals” included under his insurance. This is the type of evidence I would expect to see when the Landlord is relying on it as a basis for not taking steps to re-rent the unit. I would expect such information to be in writing in the insurance policy. I would expect this to be simple evidence to submit.

Further, the Landlord did not submit documentary evidence to support his position that his insurance company would not provide insurance for short term rentals. Again, I would expect this to be simple evidence to obtain from the insurance company and simple evidence to submit.

In the absence of documentary evidence confirming the Landlord’s reasons for not taking steps to re-rent the unit for May and June, or some part of these months, I am not satisfied the Landlord has provided an adequate reason for failing to take steps to re-rent the unit. Given I am not satisfied the Landlord took steps to re-rent the unit, I am not satisfied the Landlord took reasonable steps to mitigate the loss. Given this, I am not satisfied the Landlord has proven he is entitled to the compensation sought.

***Utilities, alarm and internet for May and June***



There is no issue that the Tenant was responsible for paying for utilities, an alarm and internet during the tenancy. However, the tenancy ended April 30, 2019. The issue here is whether the Tenant is responsible for paying for utilities, an alarm and internet pursuant to section 7 of the *Act* as a result of the breach.

I am not satisfied the Landlord is entitled to compensation for the utilities, alarm and internet for the following reasons.

The Landlord did not provide the bills for these items to the Tenant. I do not accept that the Tenant should be required to pay bills that the Tenant has not seen and therefore was unable to fully comment on at the hearing.

Further, the bills submitted by the Landlord are not admissible and therefore I have not considered them. In the absence of admissible documentary evidence showing the amount of the bills, the Landlord has failed to prove the amounts.

In relation to the internet bill, I accept that the Landlord should have cancelled the internet for May and June in order to mitigate the loss.

In relation to the gas and electricity, I do not accept that the Tenant is responsible for these for months when the Tenant did not reside in the rental unit as the Tenant would not have used gas or electricity for these months. I do not accept, in the absence of further evidence, that the Landlord suffered loss in relation to the cost of gas and electricity while the rental unit was empty. If the Landlord or his agent left the heat in the rental unit at 20 degrees thus incurring costs to heat the house, this is a cost the Landlord is responsible for as I do not accept that it was reasonable to set the heat at 20 in May and June given the location of the rental unit. In the circumstances, I am not satisfied the Landlord incurred costs for gas and electricity for May and June as a result of the Tenant's breach.

For the above reasons, I am not satisfied the Landlord is entitled to compensation for the utilities, alarm or internet.

In summary, the Landlord has failed to prove he is entitled to the compensation sought. I dismiss the Application without leave to re-apply.

### Conclusion

The Application is dismissed without leave to re-apply.

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

Dated: December 17, 2019

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Residential Tenancy Branch