



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL-S, MNDCL-S, FFL

### Introduction

On December 4, 2019, the Landlord applied for a Dispute Resolution proceeding seeking a Monetary Order for unpaid rent and utilities pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”), seeking to apply the security deposit towards these debts pursuant to Section 38 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Landlord attended the hearing; however, the Tenants did not attend the 40-minute teleconference hearing. All parties in attendance provided a solemn affirmation.

The Landlord advised that each Tenant was served a Notice of Hearing and evidence package on December 5, 2019 by registered mail (the registered mail tracking history is noted on the first page of this decision). The registered mail tracking history shows that the Tenants signed for these packages on December 8, 2019. Based on this undisputed evidence, I am satisfied that the Tenants were served the Landlord’s Notice of Hearing and evidence packages.

The Landlord requested an adjournment as he sought to increase the amount of compensation requested due to more outstanding utilities in arrears and for damage to the rental unit. He had not completed an Amendment to this Application, he did not have the final invoices for the cost of the damages sought, and he did not serve any of the additional evidence to the Tenants. Based on these factors, the Landlord elected not to request an adjournment of this Application and he may pursue a future Application for these losses.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are

described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to apply the security deposit towards these debts?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlord advised that the tenancy started on June 1, 2018 and ended when the Tenants gave up vacant possession of the rental unit on December 1, 2019. Rent was established at \$1,500.00 per month and was due on the first day of each month. A security deposit of \$750.00 was also paid. A signed copy of the tenancy agreement was submitted as documentary evidence.

He stated that the Tenants provided him with a forwarding address in writing on a piece of paper on December 1, 2019.

He advised that he is seeking compensation in the amount of **\$250.74** because the Tenants owed 1/3 of the total electrical utilities from April 2019 to November 2019, as per the tenancy agreement. He submitted, as documentary evidence, an email breakdown of these costs, dated November 22, 2019, that he sent to the Tenants. In addition, he submitted, as documentary evidence, copies of the invoices to support his claims for this amount of electrical utilities arrears.

He also advised that he is seeking compensation in the amount of **\$163.69** because the Tenants owed 1/3 of the total gas utilities from April 2019 to November 2019, as per the tenancy agreement. He submitted, as documentary evidence, an email breakdown of these costs, dated November 22, 2019, that he sent to the Tenants. In addition, he submitted, as documentary evidence, copies of the invoices to support his claims for this amount of gas utilities arrears.

Finally, he advised that he is seeking compensation in the amount of **\$48.39** because the Tenants were served a One Month Notice to End Tenancy for Cause by hand on October 30, 2019 with an effective end of tenancy date of November 30, 2019. However, the Tenants overheld and stayed in the rental unit until December 1, 2019. As such, the compensation that the Landlord is seeking is the cost of the pro-rated monthly rent for the one day that the Tenants overheld.

### Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 38 of the *Act* outlines how the Landlord must deal with the security deposit at the end of the tenancy. Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenants' forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenants, pursuant to Section 38(6) of the *Act*.

Based on the consistent and undisputed evidence before me, the Landlord received the Tenants' forwarding address in writing on December 1, 2019 and he made an Application, using this address, to keep the deposit on December 4, 2019. As the Landlord's Application was made within the timeframe to deal with the deposit pursuant to Section 38 of the *Act*, I am satisfied that the Landlord did not breach the requirements of Section 38. As such, I find that the doubling provisions of the *Act* do not apply in this instance.

With respect to the Landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

Regarding the Landlord's claims for electrical and gas utilities in the amounts of \$250.74 and \$163.69, there is no dispute that the parties entered into a tenancy agreement where the Tenants were responsible for 1/3 of these utilities. Furthermore, the consistent and undisputed evidence provided by the Landlord supports these amounts being sought. As I am satisfied that the Tenants are responsible for 1/3 of these utilities as per the tenancy agreement and as they have not paid these amounts, I am satisfied that the Landlord has established these claims. Consequently, I grant the Landlord a monetary award in the amount of **\$414.43** to satisfy these claims.

With respect to the Landlord's claim for compensation in the amount of \$48.39 because the Tenants overheld in the rental unit for one day in December 2019, based on the undisputed evidence before me, I am satisfied that the Landlord has substantiated this claim. As such, I grant the Landlord a monetary award in the total amount of **\$48.39** to satisfy this debt.

As the Landlord was successful in his claims, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain a portion of the security deposit in satisfaction of the amount awarded.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenants a Monetary Order as follows:

#### **Calculation of Monetary Award Payable by the Landlord to the Tenants**

Electrical utilities	-\$250.74
Gas utilities	-\$163.69
Recovery of filing fee	-\$100.00
Security deposit	\$750.00
<b>TOTAL MONETARY AWARD</b>	<b>\$187.18</b>

#### Conclusion

The Tenants are provided with a Monetary Order in the amount of **\$187.18** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should the Landlord 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: May 6, 2020

---

Residential Tenancy Branch