



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC MNSD FF

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on February 2, 2021. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage to the unit and for damage or loss under the Act;
- authorization to retain all or a portion of the Tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and,
- to recover the cost of the filing fee.

The Landlords had an agent attend the hearing on their behalf (referred to as the Landlord). The Tenants did not attend the hearing. The Landlord stated that he sent the Tenants each a copy of the Notice of Hearing and evidence by registered mail on October 23, 2020. The packages were sent to the rental unit and the Tenants were still residing at the unit at that time. Proof of mailing was provided at the hearing. Pursuant to section 88 and 90 of the Act, I find the Tenants are deemed to have received these documents on October 28, 2020, the fifth day after their mailing.

The Landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

- Is the Landlord entitled to a monetary order for damage to the unit and for damage or loss under the Act?
- Is the Landlord entitled to retain all or a portion of the Tenants' security deposit in partial satisfaction of the monetary order requested?
- Is the Landlord entitled to recover the cost of the filing fee?

### Background and Evidence

During the hearing, the Landlord testified the following:

They currently hold the Tenants' security deposit of \$1,100.00 and a pet deposit of \$1,100.00. The Tenants moved out of the unit on October 31, 2020, after a couple years living at the property. The Landlord stated that monthly rent was \$2,200.00 per month, due on the first of the month.

The Landlord stated that the Tenants had an illegal grow operation in the rental unit, which the Landlord found out about towards the end of the tenancy. The Landlord explained that this application was filed because the Tenants failed to pay their electricity bills from March 2020, until the end of October 2020. The Landlord provided a copy of the tenancy agreement into evidence which shows that the Tenants are responsible for electricity. A copy of the bill was provided into evidence, which shows that the bill was in one of the Tenant's name, and it amounted to \$5,812.32, up until September 14, 2020.

The Landlord contacted the utility company, and provided a copy of the email, to show that the remainder of the Tenants electricity usage would be approximately \$300.00, as of October 14, 2020. The Landlord stated that it ended up being more than this, but he was unable to amend the amount because the Tenants have vanished.

The Landlord explained that although the bills are in the Tenant's name, the Nelson Hydro authority has the ability to transfer unpaid bills to the home owner, which was done on December 31, 2020, when it was unpaid at year end. The Landlord stated that due to COVID, the power company didn't force payments, so the amount accrued, which ultimately ended up being transferred to the Landlord at the end of the tenancy.

### Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

In this case, I accept the undisputed testimony that the Tenants failed to pay \$5,812.32 in unpaid electricity bills while they were living at the rental unit. This period ran until September 14, 2020. I accept that they continued to reside there until the end of October, and that they continued to use power beyond the above noted bill. I accept that the estimate provided via email from the power company is a reasonable estimate as to what the consumption was for the latter portion of the tenancy.

I also accept that this amount was ultimately transferred to the Landlord's property taxes after the Tenants vacated the unit and failed to pay their outstanding bill. I award the Landlord's claim, in full.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was substantially successful with the application, I order the Tenants to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution. Also, I authorize the Landlord to retain the security and pet deposit to offset the other money owed.

In summary, I find the Landlord is entitled to the following monetary order:

<b>Item</b>	<b>Amount</b>
Utility bills	\$6,112.32
PLUS: Filing Fee	\$100.00
Subtotal:	\$6,212.32
LESS: Security Deposit	\$2,200.00
<b>Total Amount</b>	<b>\$4,012.32</b>

Conclusion

The Landlord is granted a monetary order in the amount of **\$4,012.32**, as specified above. This order must be served on the Tenants. If the Tenants fail to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be 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: February 02, 2021

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Residential Tenancy Branch