



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MND, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the “Act”), for a monetary order for unpaid utilities, for damages to the unit, for an order to retain the security deposit in partial satisfaction of the claim and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The tenant’s confirmed they received from the landlord copies of utility bills; however, they state there was no other evidence attached. The landlord stated that the photographs of the damage wall were included in the package that was sent to the tenants.

The landlord stated they did not receive any evidence from the tenants. The tenants stated that they placed their evidence in the landlord’s mailbox on February 28, 2021, which they photographed and witnessed.

In this case, both parties filed evidence; however, both parties have said they did not receive or that evidence was missing. I have looked at the evidence submitted by the parties. I find most of the evidence submitted by the parties is not relevant to the issue before me. As examples the landlord has filed evidence related to an allegation of a child’s attempt to burn the rental unit down. There is no claim for damages related to this and is not relevant. Only the issues written in the landlord’s application will be considered. The tenants have also filed evidence in relation to the rental unit being

contrary to the municipal by-laws that is also not relevant and is not an issue before me to consider.

I did not feel an adjournment was appropriate for the parties to further exchange evidence as this would serve no purpose. The hearing proceeded as was based on the testimony of parties and evidence that was confirmed received.

I refer only to the relevant facts and issues in this decision.

#### Issues to be Decided

Is the landlord entitled to a monetary order for unpaid utilities?

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

#### Background and Evidence

The parties agreed that the tenancy began on May 19, 2019. Rent in the amount of \$1,350.00 was payable on the first of each month. The tenant paid a security deposit of \$675.00. The tenancy ended on January 7, 2020.

The landlord claims as follows:

a.	Unpaid hydro and gas at end of tenancy	\$ 225.00
b.	Wall damage	\$ 487.00
c.	Return of laundry money	\$ 360.00
d.	Filing fee	\$ 100.00
	<b>Total claimed</b>	<b>\$1,172.00</b>

#### Unpaid utilities

The landlord testified that the tenants' portion of the utilities for hydro and gas was 50%. The landlord stated that the invoices were received after the tenancy had ended. The landlord stated that the actual amount of the invoice for hydro was the amount of \$382.20, which half of that amount is \$191.11; however, they had reduced that amount in their application to \$150.00. Filed in evidence is an invoice for the time period of November 13, 2019 to January 10, 2020.

The landlord testified that the tenant did not pay their portion of the gas from December 9, 2019 to January 7, 2020. The landlord stated the actual cost was \$79.44; however, that amount was reduced in their application to the amount of \$75.00. Filed in evidence is an invoice; however, the charges appear to be related to January 2021.

The tenants testified that they feel their portion of the utilities were too high. However, they acknowledged they were paying 50% of the said utilities since the tenancy began. The tenants acknowledged that there may have been some utilities left unpaid as they had not received the final invoices, when the tenancy ended.

### Damages

The landlord testified that they did not do a move-in condition inspection report at the start of the tenancy; however, the tenants looked at the rental unit on several occasions prior to the tenancy commencing and there were no issues. The landlord stated that the tenants caused damage to the bedroom and living room wall, which they had attempted to repair; however, it was not done correctly. The landlord stated that they received a verbal estimate for the repairs in the amount of \$487.00.

The tenants testified that they did not cause damage to any of the walls and are in the same condition as when the tenancy started.

### Return of laundry money

The landlord testified that the tenants extorted money from them telling them if they did not pay for laundry services, they would report the suite as illegal to the municipality. The landlord stated at the time they felt they had no option; however, the tenants later did report it anyway. The landlord stated that they should be entitled to this amount returned as laundry was not included in the rent.

The tenants testified that they did not extort the landlord for money. The tenants stated that they were promised a washing machine would be installed by June 2019 and when that was not done, they agreed that they would receive this amount for that loss.

### 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, the landlord has the burden of proof to prove their claim.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

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.

#### Unpaid utilities

I am satisfied based on the testimony of both parties that the tenants were responsible to pay 50% of the utilities. Simply because the tenants feel that portion was too high after the tenancy has ended is not for me to consider. This amount has been paid by the tenants for the duration of their tenancy. The landlord had the right to rely upon that agreement and the actions of the tenants.

I am satisfied that the tenant did not pay their portion of hydro at the end of the tenancy. The landlord has reduced the tenants' portion of \$191.11, to \$150.00, as there is 3 days that were after the tenancy had ended included in the utility bill. I find that reasonable. Therefore, I find the landlord is entitled to recover the amount of **\$150.00**.

In this case, the landlord has provided a natural gas bill; however, it appears to be from January 2021 and not for the time period the tenants were living in the premise. This is a gas bill dated one year later. I cannot determine based on this bill what the tenant's portion would be. I find I must dismiss this portion of the landlord's claim due to insufficient evidence.

### Damages

The evidence of the landlord was the tenants caused damage to a bedroom and living room wall. The evidence of the tenants was this damage was there at the start of the tenancy.

As both versions are probable, and the onus is on the landlord to prove their version, I find the landlord has not met the burden of proof. The landlord did not do a move-in condition inspection report as required by the Act, nor did the landlord provide any photographs of these walls at the start of the tenancy. Photographs taken at the end of the tenancy does not prove it was not there at the start of the tenancy. I find I must dismiss this portion of the landlord's claim due to insufficient evidence.

### Return of laundry money

The evidence of the landlord was that the tenants extorted money from them by wanting the cost of their laundry paid for or they would report the suite as illegal. The tenants deny such allegation and stated this was because the landlord did not provide a washing machine as promised by June of 2019.

However, even if I accept the landlord version, which there was no supporting evidence of extortion, there is no violation of the Act by the tenants. If a rental unit is not permitted by the municipality and rented by the landlord, that is the choice made by the landlord and at their own risk. It was the landlord's choice to give this money for laundry to the tenants. Therefore, I dismiss is portion of their claim.

I find that the landlord has established a total monetary claim of **\$250.00** comprised of the above described amount and the \$100.00 fee paid for this application.

I order that the landlord to retain the above amount from the tenants the security deposit of **\$675.00** in full satisfaction, this leave a balance of the security deposit of \$425.00 remaining, which must be returned to the tenants. The tenants are granted a monetary order in the amount of **\$425.00**, for the balance due of their security deposit. Should the landlord fail to return the balance of the security deposit to the tenants.

Conclusion

The landlord is granted a monetary order and may keep a portion of the security deposit in full satisfaction of the claim. The tenants are granted a monetary order for the balance due of their security deposit.

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: March 09, 2021

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Residential Tenancy Branch