



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding NAROD PROPERTIES CORP  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

This hearing convened to deal with the tenants' application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The tenants applied for compensation for a monetary loss or other money owed and to recover the cost of the filing fee.

The tenants and the landlord's agent (agent) attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me. The agent presented said he did not receive the tenants' hearing documents, but did receive their evidence. The agent presented that he learned of the hearing through a reminder email from the Residential Tenancy Branch (RTB). The agent did not file evidence.

I have reviewed all oral, written, and other evidence before me that met the requirements of the RTB Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Are the tenants entitled to monetary compensation from the landlord's agent and recovery of the cost of the filing fee?

Background and Evidence

The evidence presented shows the tenancy began on October 1, 2017, and ended on April 30, 2021. The monthly rent at the beginning of the tenancy was \$2,000 and \$2,150 at the end. The written tenancy agreement filed in evidence shows that the tenants were responsible for 65% of the utilities.

The tenants' monetary claim is \$5,529.85. In explanation, the tenants wrote of their application the following:

*This is the cumulative total of all outstanding utilities which were left unpaid by the Landlord during the tenancy. It represents 35% of the total Hydro and Fortis invoices paid pursuant to the Lease Agreement. Essentially we paid for the electricity and gas for the entire house throughout the time we were living there.*

Filed in evidence were copies of the bills.

The tenants testified that they had the utility bills in their names, which were shared with the other unit in the residential property. The tenant said that they would batch-up the utility bills and send them to the landlord 3-4 times a year for reimbursement. The bills were sent to the agent's office, but they never received reimbursement.

Agent's response

The agent said that all they wanted from the tenants was confirmation the bills had been paid so they would receive the reimbursement, however, he has never seen the invoices. There was no reason not to pay the bills.

The agent said that his property management company has been closed since March 31, 2022, and because the tenants delayed for so long in sending the bills, 5 years, it deprived him of the ability to present the bills to the owner of the residential property.

The agent submitted that the tenants 100% would have been reimbursed had they sent the bills and invoices.

### Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

#### Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove **each** of the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenants 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 tenant. Once that has been established, the tenants must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the tenants did whatever was reasonable to minimize the damage or losses that were incurred.

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.

As to the claim by the tenants for compensation, I considered whether the tenants did whatever was reasonable to minimize the damage or losses, as required by Act. I find they did not.

I find a reasonable way to minimize a claimed loss is to take immediate steps to make the claim. In this case, the tenants' evidence was they first began receiving utility bills for the rental unit in October 2017 and continued until April 2021. The tenants did not make their application for compensation until a year after the tenancy ended. Further,

the landlord denied receiving the paid invoices, or confirmation of payment and I find the tenants submitted insufficient evidence to counter that assertion.

I find by not bringing this claim in a timely manner after the tenants first began not being reimbursed allowed the claim to build and grow.

On this basis, I find the tenants failed to mitigate their loss as required by section 7(2) of the Act as it is unreasonable to wait until the tenancy was over and then another year after that to take any appropriate steps. The landlord's agent had closed their office and had long stopped representing the landlord/owner by that point.

Due to this delay, I find the legal doctrine of "waiver" applies here, as I find the tenants' clear intention was to forgo the exercise of their contractual right under the tenancy agreement.

I therefore find the tenants submitted insufficient evidence to meet their burden of proof, and as a result, I dismiss the tenants' application, without leave to reapply, including the request to recover the filing fee.

### Conclusion

The tenants' application is dismissed, without leave to reapply, due to insufficient evidence.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: January 19, 2023

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Residential Tenancy Branch