



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNR MNSD FF

### Introduction

This hearing was convened as a result of the landlords' application for dispute resolution under the *Residential Tenancy Act* (the "Act") for a monetary order for unpaid rent or utilities, to keep all or part of the security deposit, and to recover the filing fee.

One of the applicant landlords, an agent for the landlords, both of the tenants and a witness for the tenants appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

The tenants confirmed receipt of the landlords' evidence with the exception of the photos. The photos received by the tenants differed both in number and type of photos, and as a result, the photos were excluded from the hearing as they were not served in accordance with the Residential Tenancy Branch Rules of Procedure.

### Issues to be Decided

- Is the landlord entitled to a monetary order for unpaid rent or utilities?
- Should the landlord be authorized to keep all or part of the security deposit?

### Background and Evidence

The parties agree that a month to month tenancy began on November 1, 2011. Rent in the amount of \$1,500.00 was due on the first day of each month. A security deposit of \$750.00 was paid by the tenants at the start of the tenancy. The parties dispute each other's testimony regarding the utilities. The parties agree that the utilities were not included in the rent, however, the tenants stated that the agreed upon amount for their share of the utilities was 33.3% as there are three rental units. The landlord stated that the tenants share was 80% of the utilities, however, they did not provide a copy of the written tenancy agreement as evidence for the hearing. The tenants stated they did not receive copies of the utility bills from the landlords.

The tenants testified that they provided written notice to the landlords on February 28, 2012, indicating that they would be vacating the rental unit on March 31, 2012. The witness for the tenants testified that he witnessed the written notice being served on the landlords on February 28, 2012. The tenants attempted to meet with the landlord on March 28, 2012, however, the landlords were not available, so the keys were returned at the earliest available time when the landlords became available, which was April 1, 2012 according to the landlord. The tenants disputed the landlord's testimony by stating that the keys were returned on April 2, 2012, as the landlord was unavailable the days prior.

The tenants stated that they have already applied for dispute resolution regarding the security deposit which has been scheduled for a subsequent hearing.

The landlords submitted copies of invoices for utilities as documentary evidence prior to the hearing, however, did not provide any supporting documentary evidence regarding the written agreement in relation to the payment of utilities.

### Analysis

Based on details of the application, the documentary evidence, the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

### 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 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 landlords 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 landlords did everything possible 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.

**Claim for unpaid utilities** – By failing to provide a copy of the written tenancy agreement, the landlord has failed to meet the burden of proof regarding what was agreed upon at the start of the tenancy in terms of payment of utilities. The landlords, therefore, have failed to prove that the tenants failed to comply with the terms of the tenancy agreement. As a result, **I dismiss** the landlords' application due to insufficient evidence without leave to reapply.

As the landlords have not succeeded with their application, I **do not** grant the recovery of the filing fee.

The security deposit has already been dealt with in a separate Decision dated September 19, 2012. The file number is referenced on the front page of this Decision.

### Conclusion

I dismiss the landlords' application due to insufficient evidence.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: September 20, 2012

---

Residential Tenancy Branch