



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNR, MNDC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for unpaid rent and unpaid utilities.

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 parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. 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 rent and utilities?

### Background and Evidence

The tenancy began in October 2008. Rent in the amount of \$650.00 was payable on the first of each month. A security deposit of \$325.00 was paid by the tenants. The tenancy ended on May 31, 2013.

On August 14, 2013, the tenants' application for dispute resolution was scheduled to be heard before me and on August 15, 2013, I granted the tenants a monetary order as the landlord had failed to comply with section 38 of the *Residential Tenancy Act*.

On December 9, 2013, the landlord filed an application for dispute resolution, which claims as follows:

a.	Unpaid utilities	\$150.00
b.	Loss of rent for June 2013	\$650.00
c.	Filing fee	\$ 50.00
	<b>Total claimed</b>	<b>\$850.00</b>

### Unpaid utilities

The landlord testified that tenants failed to pay their portion of the hydro utility at the end of the tenancy. The landlord seeks to recover the amount of \$150.00. Filed in evidence is a hydro invoice in the amount of \$225.54.

The tenants testified that their hydro meter is not the same number as on the hydro invoice. The tenants stated that the main house has a washer and dry and they should be required to by hydro for another renter. Filed in evidence are photographs of a hydro meter.

The landlord argued that there is only one hydro meter that is read by BC hydro. However, there are two sub meters, one for each rental premises. The landlord stated he uses the sub meters to determine the actual usage of each tenant and there has never been any dispute prior to the tenancy ending.

### Loss of rent for June 2013

The landlord testified that the tenants did not give written notice to end tenancy as required by the Act. The landlord stated the tenants told him verbally on April 29, 2013, that they were moving when he received their forwarding address. The landlord stated he was unsure if the tenants would move and he informed the tenants that they must provide notice to end the tenancy in writing.

The landlord testified he filed in evidence two letters both dated April 29, 2013, however, the only letter he received was the tenants' letter providing a forwarding address, marked as #2. The landlord stated the other letter dated April 29, 2013, mark as #3, he never received and it was only seen because it was submitted as evidence at the previous hearing.

The tenants testified that on April 29, 2013, they gave the landlord their change of address and when the landlord complained about needing written notice to end the tenancy that they immediately wrote the second letter and gave it to him "right then and there".

The landlord denied receiving the second letter and alleged the second letter was created after the fact.

### 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.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the landlord has the burden of proof to prove their claim.

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

In this case, the tenants alleged the hydro meter number on their rental unit is not the same as listed in the invoice. I accept that evidence, however, the evidence also supports that the invoice is for the rental unit and another premise. Both premises have sub meters which are read by the landlord and the tenants have paid their portion each month for the duration of the tenancy which commenced in 2008.

The tenants paid the amount of \$238.00 on April 29, 2013 as that is what they wrote in their letter dated April 29, 2013. The tenants did not deny owing utilities for May, 2013.

I find if the tenants were disputing the landlord method to calculate the usage of the utility, that dispute should have been dealt with at the start of the tenancy not after the tenancy ended. I find the tenants breached the Act, when they failed to pay utilities owed for May, 2013. Therefore, I find the landlord is entitled to recover unpaid utilities in the amount of **\$150.00**.

Loss of rent for June 2013

Section 45 of the Residential Tenancy Act states:

*45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that*  
*(a) is not earlier than one month after the date the landlord receives the notice, and*  
*(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement*

In this case, both parties have provided a different version of events. The evidence of the tenants was that written notice to end the tenancy was given personally to the landlord on April 29, 2013. The evidence of the landlord was that he never received written notice although it was requested. The landlord alleged the letter dated April 29, 2013 was written after the fact.

I have review the letter dated April 29, 2013, marked #3, which in part reads,

“Both, ... gave verbal 30 days notice to you... & you accepted it. We are now putting it in writing we will be vacating ... as of the end of May 31/13. We paid May rent early like we always do pay rent. Paid \$650 cash for May 31/13 & \$238 Hydro cash (Both on Apr 29/13). We hand delivered a letter with a forwarding address ...”

[Reproduced as written]

In this case, I prefer the landlord’s version over the tenants’ that the letter was written some time after April 29, 2013, because it would be unreasonable to include information on verbal notice, if they were giving written notice at the same time.

Further, I find the portion which refers to, “Paid \$650 cash for May 31/13 & \$238 Hydro cash (Both on Apr 29/13). We hand delivered a letter with a forwarding address ...” suggests they are referring an action that happened in the past.

Therefore, based on the balance of probability, I find the tenants breached the Act when they failed to provide written notice to the landlord to end the tenancy prior to vacating the rental unit on May 31, 2013.

As a result of the tenants not complying with the Act the landlord suffered a loss of rent for June 2013, the landlord is entitled to an amount sufficient to put the landlord in the

same position as if the tenants had not breached the Act. This includes compensating the landlord for any loss of rent up to the earliest time that the tenants could have legally ended the tenancy. As the tenants vacated the unit on May 31, 2013, without providing proper notice, I find the earliest date they could have legally ended the tenancy was June 30, 2013. Therefore, I find the landlord is entitled to recover unpaid rent for June in the amount of **\$650.00**.

I find that the landlord has established a total monetary claim of **\$850.00** comprised of the above described amounts and the \$50.00 fee paid for this application.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

### Conclusion

The landlord is granted a formal monetary order in the amount of \$850.00.

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: April 11, 2014

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Residential Tenancy Branch

