



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

This hearing dealt with an application by the tenants for return of double the security deposit. Both parties appeared and had an opportunity to be heard.

The landlord indicated a desire to have her claim heard and decided as well even though she had not made a formal application for dispute resolution for a monetary order, and that all the evidence she needed was included in the evidence the tenants had filed. The tenants expressed a desire to have all issues between them resolved at this hearing. Accordingly, I heard evidence and will render a decision on the landlord's claim for damages as well as the tenant's claim for return of the security deposit.

### Issue(s) to be Decided

Is either party entitled to a monetary order and, if so, in what amount?

### Background and Evidence

This tenancy commenced January 1, 2011, as a one year fixed term tenancy and continued thereafter as a month-to-month tenancy. The monthly rent of \$800.00 was due on the first day of the month. The tenants paid a security deposit of \$400.00. In addition to the rent, the tenants were also responsible for one-third of the utilities.

A move-in inspection was not conducted and move-in condition inspection report was not completed.

The tenancy ended on April 30, 2014. A move-out inspection was not conducted and a move-out condition inspection report was not completed.

The landlord acknowledged receipt of the tenant's forwarding address in writing at the end of May.

The landlord returned \$200.00 of the security deposit to the tenants by a cheque dated May 30.

The landlord claims unpaid utilities; the tenants questions some of the claims although they did admit responsibility for the April gas bill in the amount of \$43.00.

### Analysis

Based on the bills filed by the parties I find as follows:

a. Natural Gas Invoice Dated April 1, 2014

The balance carried forward was for the month ending March 3, 2014 - \$199.32 divided by 3 = **\$66.44.**

The current portion of the invoice was for the period March 3, 2014 to April 1, 2015 - \$131.85 divided by 3 = **\$43.95.**

There is no proof that either portion of this invoice was paid by the tenants.

b. Hydro Invoice Dated May 6, 2014 for the period March 5, 2014 to May 2, 2014.

March 6 to March 31 - \$82.57 divided by 3 = **\$27.52**

Levy - \$12.15 divided by 3 = **\$4.05**

April 1 to April 30 - \$117.96 – The daily rate for this period is \$3.68625. One third of the daily rate is \$1.22875. The tenants' share calculated at \$1.22875 X 30 days = **\$36.86.**

In total I find that the tenants owe the landlord **\$178.82** for unpaid utilities.

With regard to the security deposits section 38(1) of the *Residential Tenancy Act* provides that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit to the tenant or file an application for dispute resolution claiming against the deposit. If the landlord only returns a part of the security deposit they must file an application for dispute resolution claiming against the balance within the 15 day time limit.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit. The legislation does not allow any flexibility on this issue.

The way in which arbitrators are to calculate the amount owed when there has been a partial reimbursement by the landlord is explained in *Policy Guideline 17: Security Deposit and Set off*. Basically the amount of the security deposit is doubled and then

the partial payment is deducted from that amount. Accordingly, I find that the landlord must pay the tenants **\$600.00**. (Double the security deposit of \$400.00 less partial payment of \$200.00)

The tenants also claimed compensation for loss of wages incurred while pursuing their claim. The *Act* does not allow an arbitrator to award any party the costs of preparing or serving their application for dispute resolution or evidence, including lost wages. This part of the tenants' claim is dismissed.

As the tenants were only partially successful I find that they are entitled to partial reimbursement from the landlord of the fee they paid to file their application. Accordingly I award the tenants **\$25.00** for this item.

In summary I have found that the landlord is entitled to payment from the tenants in the amount of \$178.82 and that the tenants are entitled to payment from the landlord in the amount of \$625.00. Setting one amount off against the other I find that the tenants are entitled to payment from the landlord in the amount of **\$446.18** and pursuant to section 67 I grant them a monetary order in that amount.

#### Conclusion

After setting off orders in favour of the landlord and the tenants a monetary order in favour of the tenants has been made. If necessary, this order may be filed in the Small Claims Court and 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: September 23, 2014

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Residential Tenancy Branch

