

# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## Decision

Dispute Codes: MNSD, MNR, FF

## Introduction

This hearing dealt with an application by the tenant for the return of double his security deposit and a cross-application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing and had opportunity to be heard.

## Issue(s) to be Decided

Is the tenant entitled to the return of double his security deposit?

Is the landlord entitled to a monetary order as claimed?

## Background and Evidence

The tenancy began on November 1, 2008 establishing a fixed term tenancy which would expire on October 31, 2009. The rent was set at \$1,900.00 per month and the tenancy agreement shows that utilities were not included as part of the rent. The tenant paid a \$950.00 security deposit on October 12, 2008.

The tenant claimed that on February 20 he gave the landlord written notice by way of an email that he would be vacating the rental unit. The tenant testified that his forwarding address was in that email. The landlord denied having received written notice of the tenant's intent to vacate and claimed that he heard from a property manager that the tenant intended to leave.

In late February the parties had a discussion and agreed that the landlord would retain half of the security deposit and return the other half, \$475.00, to the tenant and that the tenancy would end at the end of the month. The landlord testified that after having made this agreement, he discovered that the tenant had failed to pay outstanding hydro bills and therefore the landlord returned only \$137.14 to the tenant. The tenant testified

that when he did not receive the full half of the security deposit that he had expected, he decided to ask for the return of double the security deposit.

The landlord testified that he had been prepared to accept the tenant's late notice of vacancy and not demand rent for March, but when the tenant made an application for the return of his security deposit, he felt "the deal was off the table" and he made his own claim. The landlord claims for lost income for March as he was unable to re-rent the unit until April 1, liquidated damages in the amount of the security deposit because the tenant broke the fixed term tenancy and \$289.28 for unpaid hydro.

The tenant acknowledged that the tenancy agreement required that he pay hydro, but testified that when he signed the agreement, the landlord's agent indicated that hydro was included in the rent. The tenant testified that in early December he received a letter from the landlord indicating that up until January 1, 2009 the landlord would pay the hydro bills, but from January 1 onward the tenant would be responsible for hydro. The tenant did not keep a copy of this letter. The tenant put the hydro account into his own name in January. The landlord testified that the building had originally had just one water meter, but that independent meters for each unit were installed and that in October, tenants were sent letters advising that they needed to put hydro into their own names. The landlord maintained that during this tenancy there was never an offer put forward to the tenant that the landlord would pay part of his hydro bills. The landlord submitted a copy of a BC Hydro invoice showing that \$297.65 was payable for the months of November – December.

### Analysis

I find that in the conversation that took place in late February, the parties made a binding agreement that the tenancy would end on February 28 and the landlord was entitled to retain \$475.00 from the security deposit. I find that the tenant is therefore estopped from claiming the full amount of the security deposit from the landlord and that the landlord is estopped from claiming unpaid rent or liquidated damages from the tenant.

Because the landlord denied having received the tenant's email of February 20 and a copy of that email was not submitted into evidence, I find that the tenant has not proven

that the landlord received his forwarding address on February 20. The tenant may not claim double his security deposit as the 15 days for the landlord to Act in accordance with the provisions of section 38 of the Act had not yet been triggered.

I find that the landlord wrongfully withheld \$338.86 from the tenant's security deposit as he had agreed to return \$475.00. However, I find that the tenant has not proven that the landlord had forgiven him his obligation to pay utilities during the first three months of the tenancy and accordingly I find that the landlord is entitled to recover the \$289.28 in utility bills which are owed.

The tenant is awarded \$338.86 and the landlord is awarded \$289.28. I find it appropriate to set off the awards as against each other and I grant the tenant a monetary order under section 67 for \$49.58. The landlord is ordered to pay this sum to the tenant forthwith. The order may be filed in Small Claims Court and enforced as an order of that Court.

I find it appropriate for the parties to each bear the cost of their own filing fees.

### Conclusion

The tenant is granted a monetary order for \$49.58.

Dated June 25, 2009.