



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MNR, MNSD, O, FF

### Introduction

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

### Issues(s) to be Decided

This decision deals with three applications for dispute resolution, two brought by the tenant and one brought by the landlords. All files were dealt with at this hearing.

Issues are whether the landlord must return rent that was paid for the month of February 2010, and the tenant's security deposit, and whether the landlord has a claim for outstanding utilities.

### Background and Evidence

#### Tenants claim for rent for February 2010

The tenant testified that:

- They had signed a one-year lease; however they had to break the lease due to employment issues.

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- They had paid the rent up to the end of February 2010; however the landlord was able to re-rent the unit for February 1, 2010.

The tenant is therefore requesting that the landlord reimburse the \$1375.00 rent that was paid for February 2010.

The landlord testified that:

- The tenants did sign a one year lease which had a clause that stated they could break the lease by giving three months written notice.
- The tenants did give three months written notice which would make the end of tenancy the end of February 2010.
- Therefore it is his position that the tenants were required to pay rent to the end of February 2010, whether he re-rent it or not, for the privilege of breaking the lease.

The landlord is therefore requesting that the claim for February 2010 rent of \$1375.00 be denied

## Analysis

It is my decision that I will order that the landlord returned the \$1375.00 rent that was paid for the month of February 2010.

If a tenant breaks a lease, they are liable for any loss suffered as a result of breaking the lease and therefore had the rental unit not been re-rented in the month of February 2010 they would have been liable for that rent.

In this case however the landlord was able to re-rent the unit for the month of February 2010 and therefore the tenants are not liable for rent for that month in the landlord must return the rent that was paid by the tenants for February 2010.

I also allow the tenants request for the \$50.00 filing fee.

## Landlords claim for utility charges and to retain the security deposit

The landlord testified that:

- In the addendum to the tenancy agreement the tenants agreed to clause 11 which states:
  - Tenants are responsible for paying utilities and other usage costs; such as power, gas, water, replacing filters, and maintaining any septic system.
- The tenants have not paid the 2009 water bill totalling \$429.78.
- The tenants have not paid their portion of the 2010 water bill, prorated for two months= \$78.00.
- When the tenants vacated he had to have the septic tank pumped at a cost of \$315.00 as it was completely full.

The landlord is therefore requesting a monetary order totalling \$822.78, plus the \$50 filing fee, for overall total of \$872.78. The landlord further requests that he be allowed to keep the full security deposit towards his order and then a monetary order be issued for the difference.

The tenant testified that:

- she does agree that water was not included in the tenancy agreement however she believed they had already paid the 2009 water bill, and if they had not why did not the landlord bill them back in 2009.
- They did maintain the septic system while they were there, putting in the enzymes that are required on a regular basis, however they do not believe they are responsible for pumping out the septic tank.

The tenants therefore do not believe they should have to pay the 2009 water bill, or the septic pump out.

## Analysis

### Water bills

Water is not included in the tenancy agreement and therefore the tenants are liable for the cost of their water usage, and although the tenant believes she paid the 2009 water bill there is no evidence to show that she has.

I therefore will allow the landlords claim for water for 2009 and prorated for 2010; however not the full amount of requested by the landlord.

The bills supplied by the landlord show two portions to the bill one portion is water taxes and the other portion is water tolls. The tenants are not liable for the landlord's taxes; they are only liable for the water tolls.

The water tolls for 2009 are \$178.54, and therefore that is the amount the tenants owe for water for 2009.

The water tolls for 2010 are \$196.39, and therefore since the tenants are liable for the water to the end of January 2010, the tenants must pay \$16.36 for water for 2010.

### Septic system

Section 32 of the Residential Tenancy Act states:

**32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

In this case it is my decision that by adding the proper enzymes to the system on a regular basis the tenants met their obligation, both under the addendum to the tenancy agreement and under the Residential Tenancy Act, with regards to maintaining the septic system.

The tenants obligation to maintain the septic system does not include having to have the system pumped out, that is the charge that must be borne by the landlord.

The landlords claim for pumping out the septic tank is therefore dismissed.

### Filing fee

I also order that the landlord bear the \$50.00 cost of the filing fee that he paid, because I have only allowed a small portion of his claim.



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### Conclusion

I have allowed \$194.90 of the landlords claim, and therefore he must return the remaining \$405.10 of the security deposit plus interest of \$9.00, for a total of \$414.10 to the tenant.

I have also ordered that the landlord returned the February rent of \$1375.00, plus the filing fee of \$50.00 for a total of \$1425.00 to the tenant.

I have combined the both the amounts in one order totalling \$1839.00

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: August 25, 2010.

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Dispute Resolution Officer