



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      For the Tenants: MNDC, MNSD, FF  
For the Landlord: MNR, FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties.

The Tenants have requested a monetary order for compensation under the Act or tenancy agreement, for return of the security deposit, and to recover the filing fee for the Application.

The Landlord has requested an order for monetary compensation under the Act or tenancy agreement for unpaid utilities and to recover the filing fee for the Application.

Both parties appeared, along with the Landlord's witness, 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 to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

Are the Tenants entitled to the monetary compensation sought?

Is the Landlord entitled to the monetary compensation sought?

### Background and Evidence

The tenancy began on October 1, 2009, monthly rent was \$2,100.00, and a security deposit in the amount of \$1,050.00 was paid on October 2, 2009.

The tenancy agreement listed four people as tenants, who were obligated to pay the monthly rent. Further the testimony indicated that the rental unit was used as two separate units, upper and lower, and that two of the four tenants used the upstairs and the other two, the downstairs. The Tenants in this Application resided in the lower unit.

The testimony indicated that the upper tenants abandoned the rental unit at the beginning of July 2010, without notice, and the Tenants in this application supplied a notice to the Landlord and ended the tenancy on July 31, 2010, with a move out date of August 1, 2010. There is a dispute as to the date of delivery of the written notice, with the Tenants stating the date was August 4 and the Landlord testifying that she did not receive the forwarding address until August 27, 2010, when the Tenants delivered the Application and Notice of Hearing package to the Landlord's workplace.

The testimony and tenancy agreement indicated that the four Tenants were responsible for paying the utilities and services, but that the bills were left in the Landlord's name and the Tenants paid the bills directly to the billing party.

The Landlord acknowledged that she sometimes received 2 rent cheques in the same month for the 2 units, totalling \$2,100.00. The Landlord did not dispute that the four Tenants made arrangements amongst themselves as to the division of rent and utilities.

#### Tenants' Application

The Tenants have filed for a return of their share of the security deposit, which they thought was \$475.00 or \$500.00. The Tenants testified that they never received a copy of the tenancy agreement or the inspection reports.

The Tenants testified that the Landlord knew of their arrangement with the upper tenants to pay a proportionate share of the rent and utilities and further testified that they had paid all their share of the utilities and did not owe anything further to the Landlord.

The Tenants stated that the hydro bill for July was larger than it should have been as new tenants moved in the upper rental unit in mid July, using the air conditioner and water.

The Landlord disputed this and provided a new lease agreement for the upper rental unit, with new tenants and effective beginning date of August 1, 2010.

The Tenants claimed that they hired a carpet cleaner to clean the carpets, but the cleaner was unable to do so because the new tenants had already moved their belongings in.

The Tenants' relevant evidence included copies of the utility bills with their handwritten notations about paying their portion of the bills.

#### Landlord's Application

The Landlord is claiming for unpaid utilities in the amount of \$543.85, which includes \$39.01 for Terasen Gas, \$202.09 for BC Hydro, \$101.04 for water usage, \$135.79 for garbage pickup, and \$65.92 for carpet cleaning.

The Landlord testified that it was easier to leave the utilities in her name and have the tenants pay the bills directly, and that she did not know there were unpaid bills until the end of the tenancy.

The Landlord's statement and evidence indicated that she believed that as the Tenants rented the premises as a whole house, they should be responsible for any outstanding rent and/or utilities incurred at the rental unit.

The Landlord's relevant evidence included copies of the utility bills and the tenancy agreement with addendum.

I note that no copy of a move in or move out inspection report has been supplied as evidence.

### Analysis

Based on the above, the testimony, evidence and photographs, and on a balance of probabilities, I find as follows:

When making a claim for damages or loss under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages or loss requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

### Landlord's claim (Analyzed First)

The obligation of the Landlord is to provide opportunities for a move in and move out condition inspection under Section 23(3) and Section 35. Without this document, I find the Landlord has not established the condition of the rental unit either before or after this tenancy. Therefore I find that the Landlord has **provided insufficient evidence of** alleged damages to the carpet and I **dismiss** that portion of the Application in the amount of \$65.92.

The Tenants were co-tenants with the upper unit and are jointly and severally liable for meeting the requirements of the tenancy agreement and obligations for the Landlord's losses.

The law places the responsibility on the Tenants to apportion among themselves the amount owing to the Landlord. Furthermore, as co-tenants they are jointly and severally liable for debts and damages relating to the tenancy. This means the Landlord may recover the full amount of money due from both, or any one of the Tenants.

Therefore I accept the evidence and testimony of the Landlord that the four Tenants were jointly and severally liable for the unpaid utilities left owing after the tenancy and I find the Landlord has proven a loss under the Act for unpaid utilities in the amount of **\$477.93**.

#### Tenants' claim

Just as the law places the responsibility on the Tenants to apportion among themselves the amount owing to the Landlord, the Landlord likewise cannot apportion her obligations to the Tenants under the Act or agreement, in this case to return the security deposit at the end of the tenancy.

The Landlord's testimony affirmed that she received the Tenants' forwarding address on August 27, 2010. The Landlord's application **does not** include a claim against the security deposit and thus she has not applied for dispute resolution to keep the security deposit, does not have an Order allowing her to keep the \$1,050.00, and does not have the Tenants' written consent to retain the security deposit.

As the Landlord did not comply with section 38 (1) of the Act, which here required the claim to be filed within the 15 days from August 27, 2010, section 38(6) requires the Landlord to repay the Tenants double the security deposit held, I find the security deposit due to the Tenants is **\$2,100.00**, comprised of double the \$1,050.00.

The Landlord may retain **\$477.93** from the \$2,100.00, and must return the balance of **\$1,622.07** to the Tenants. Pursuant to the policy guideline, I have provided the Tenants with a monetary order under section 67 in these terms. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

As each party was successful, I have not granted either party the filing fee.

#### Conclusion

The Landlord is allowed to retain \$477.93 from the security deposit and the Tenants are granted a monetary order for \$1,622.07.

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: November 12, 2010.

---

Dispute Resolution Officer