

DECISION

Dispute Codes: *MNDC, MNSD, MNR, FF.*

Introduction.

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for a monetary order for unpaid utilities, the filing fee and to retain a portion of the security deposit in satisfaction of his claim. The tenant applied for a monetary order for compensation, the return of his security deposit and the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Is the landlord entitled to an order to recover unpaid utilities and the filing fee? Is the tenant entitled to compensation, the filing fee and the return of his security deposit?

Background and Evidence

The tenancy started on March 15, 2010 and ended on March 15, 2011. The rent was \$850.00 due on the first day of each month and did not include utilities. Prior to moving in the tenant paid a security deposit of \$425.00. The rental unit was located on the lower level of the home. The upper level was occupied by other tenants.

The landlord stated that the tenant owed a total of \$325.72 in unpaid utilities and filed copies of the outstanding bills. The landlord had totalled his claim incorrectly as \$303.72 to which the tenant agreed. However on closer examination of the total, the correct total of the unpaid utilities is \$325.72. The landlord also claimed late fees which he agreed to waive.

The tenant applied for compensation for the following:

1.	Loss of parking	\$300.00
2.	Loss of sleep due to noise disturbances	\$1,200.00
3.	Inconvenience of inoperative outlet	\$50.00
4.	Overflowing gutter	\$100.00
5.	Plumbing repair clean up	\$450.00
6.	Harassing and threatening voicemails	\$500.00
7.	Weekend no show appointments	\$450.00
	Total	\$3,050.00

A term in the tenancy agreement allowed the tenant the use of the left side of the driveway. The tenant stated that the upstairs tenant parked an unlicensed vehicle on this side of the driveway. He reported it to the landlord who asked him to contact the upstairs tenant directly. The landlord stated that there was a spot on the driveway available for the tenant's vehicle but he chose to park it on the street. The tenant confirmed that the driveway was steep and could cause brake damage, so he chose to park on the street. He is claiming \$300.00 for the loss of use of a portion of the driveway.

The tenant stated that the room of the upper level located above his bedroom had a squeaky floor and every time someone walked on it or even sat down on the bed, he heard it. This resulted in disturbances to his sleep. He reported it to the landlord who checked it out and found that to eliminate the squeak; he would have to rip the entire floor out. He informed the tenant that this could not be repaired. The tenant is claiming \$1,200.00 as compensation for the sleepless nights he spent during the tenancy.

The tenant stated that he found an inoperative electric outlet in the laundry room which he used for vacuuming. He reported it to the landlord who delayed having it fixed. The landlord stated that this outlet was in the laundry room and was rarely used and therefore he did not consider it to be an emergency repair. He had an electrician fix it about four months after the tenant reported it. The tenant is claiming \$50.00 for the inconvenience he endured during the four months.

The tenant stated that there was an overflowing gutter right above the entrance to his rental unit. He reported it to the landlord who had it cleaned out but not repaired. The landlord stated that he had it attended to on May 05, 2010 and August 10, 2010 and had invoices to support the cost he had incurred. The tenant is claiming \$100.00 as compensation for the inconvenience he endured from water dripping on him as he entered his rental unit.

The tenant complained about the noise from the plumbing every time the toilet flush was used. The landlord hired a plumber to fix the problem. The tenant stated that he had to take his shelving unit apart, in order to allow the plumber access to the pipes. He also stated that the plumber left a mess that he had to clean up. The tenant stated that he reported the time spent cleaning up the mess to the landlord, after he had cleaned it up. The tenant is claiming \$450.00 as compensation for his time.

The tenant is also claiming \$500.00 as compensation for the harassing and threatening voice mails that he received from the landlord.

The tenant did not have any evidence to support this allegation. He stated that he had reported it to the police and had a file number.

The tenant stated that the landlord made six appointments to show the rental unit on the weekend. He showed up with a prospective tenant prior to the first appointment. The tenant granted access to the landlord for a showing. The landlord stated that the person who looked at the unit agreed to rent it and therefore he advised the tenant that he would not be showing it anymore. The tenant stated that the landlord did not. The tenant is claiming \$450.00 as compensation for the time spent waiting for the landlord to show up.

Analysis

Landlord's application:

The parties have agreed that the tenant owes the landlord for utilities in the amount of \$325.72. Therefore I find that the landlord has established his claim. Since the landlord has proven his claim, he is also entitled to the recovery of the filing fee. Overall the landlord has established a claim of \$375.72.

Tenant's application:

1. Loss of parking - \$300.00

Based on the testimony of the tenant, I find that the tenant chose to park on the street for fear of damage to his vehicle, on the steep driveway. A portion of the driveway was available for the tenant to park his vehicle and therefore I find that the tenant is not entitled to compensation for loss of parking.

2. Loss of sleep - \$1,200.00

In order to prove an action for a breach of the covenant of quiet enjoyment, the tenant has to show that there has been a substantial interference with the ordinary and lawful enjoyment of the premises, by the landlord's actions that rendered the premises unfit for occupancy.

The tenant's testimony consisted of noise disturbances associated with normal every day activities. The tenant was aware that there were other tenants upstairs and therefore noise disturbances caused by movements on the upper floor are not unexpected.

Tenants renting a basement unit are required to accept the fact that that they will hear noises from the upstairs. I find that the tenant has not proven that the noise disturbances were deliberate on the part of the upstairs tenants.

I find that the tenant may have been disturbed by the movements of the residents upstairs, but this does not constitute a basis for a breach of the covenant of quiet enjoyment. Accordingly, I find that the tenant has not proven his case for compensation for the loss of quiet enjoyment.

3. Inconvenience due to inoperative outlet - \$50.00

The electrical outlet in the laundry room was not in working condition. The tenant advised the landlord who had it fixed four months after the complaint. The tenant used this outlet to vacuum the floors and therefore suffered some inconvenience for the four months while it was not available for use.

Residential Tenancy Policy Guideline #16 states that an arbitrator may award nominal damages which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right.

I find it appropriate to award the tenant a minimal award taking into account that this outlet was located in the laundry and was used primarily for vacuuming. Accordingly I award the tenant \$25.00 for the inconvenience he suffered during the delay of four months, before it got fixed.

4. Overflowing gutter - \$100.00

Based on the sworn verbal testimony of both parties, I find that the landlord had the problem attended to twice during the tenancy. Therefore I find that the tenant has not proven negligence on the part of the landlord. Accordingly, the tenant's claim for \$100.00 is dismissed.

5. Plumbing repair clean up - \$450.00

The tenant stated that he informed the landlord about the time he spent dismantling a shelving unit and cleaning up after the plumber, after he completed the work. He did not give the landlord an opportunity to follow up on the cleaning of the mess caused by the plumber. Therefore I find that the tenant is not entitled to compensation for his time.

6. Harassing and threatening voicemails - \$500.00

The landlord denied this allegation and apart from a police file number, the tenant did not have any evidence to support his claim. Accordingly, I dismiss the tenant's claim for compensation.

7. No show appointments on the weekend - \$450.00

The landlord agreed that he had made these appointments for showings on the weekend. However, he stated that the first prospective tenant rented the unit and therefore the landlord informed the tenant that there would be no more showings. The tenant stated that the landlord did not inform him of the cancelled appointments.

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. The tenant was not able to provide any evidence to support his claim and therefore the tenant's claim for compensation is dismissed.

Overall the tenant has established a claim of \$25.00. Since the majority of his claim is dismissed, he must bear the cost of filing his application.

The landlord has established a claim of \$375.72. The landlord currently holds a security deposit in the amount of \$425.00. There is no interest applicable to this deposit.

I will use the offsetting provisions of section 72 of the *Act* to grant the tenant a monetary order under section 67 of the *Residential Tenancy Act*, in the amount of \$74.28 which consists of the tenant's entitlement of \$25.00 plus the security deposit of \$425.00 minus the landlord's entitlement of \$375.72. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order in the amount of **\$74.28**.

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: July 19, 2011.

Residential Tenancy Branch