



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      DRI, MND, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with cross applications. The tenant applied to dispute an additional rent increase and monetary compensation for damage or loss under the Act, regulation or tenancy agreement, as well as return of the security deposit. The landlord applied for monetary compensation for damage to the rental unit, unpaid rent or utilities, and authority to retain the security deposit.

The hearing was originally scheduled for May 12, 2011; however, a adjournment was granted at the request of the landlord in order to deal with a serious illness of the landlord's father. At the reconvened hearing both parties appeared and were provided the opportunity to make submissions, in writing and orally, and to respond to the submissions of the other party.

With respect to service of hearing documents, I heard the tenant served his application and first evidence package to the landlord via registered mail. I also heard that a second evidence package was left at the landlord's house on April 29 or May 4, 2011; however, the landlord claimed she had insufficient time to review the tenant's evidence. I accepted and considered the tenant's second evidence package as I was satisfied it was served upon the landlord weeks prior to the hearing.

The tenant confirmed receiving the landlord's application; however, the landlord did not provide any supporting documentation as evidence for this proceeding. I heard verbal testimony in support of the landlord's claims against the tenant.

### Issue(s) to be Decided

1. Has the tenant established that he paid an additional rent increase to which the landlord was not entitled to collect?
2. Has the tenant established an entitlement to compensation from the landlord due to the condition of the rental unit?
3. Has the landlord established an entitlement to compensation for unpaid utilities and heating oil?

4. Has the landlord established an entitlement to compensation for damage to the rental unit and new locks?
5. Should the security deposit be returned to the tenant or retained by the landlord?

### Background and Evidence

The tenant moved into the upper unit of the residential property December 1, 2010. A \$325.00 security deposit was transferred from the tenancy the tenant had previously in the basement unit of the residential property. The parties agreed that the tenant would be required to pay rent of \$800.00 on the 1<sup>st</sup> day of every month under a verbal tenancy agreement. The tenant paid rent of \$800.00 for December 2010 and a reduced rent of \$550.00 as agreed by the parties. The landlord did not prepare move-in or move-out inspection reports. The tenant vacated the rental unit in the first week of January 2011.

It was undisputed that the tenant received a 10 Day Notice to End Tenancy for Unpaid Rent on January 4, 2011. The 10 Day Notice indicates \$75.00 was owed for "balance of security deposit", \$50.00 for the arbitrator fee, \$139.00 for electricity consumed December 1 – 20, 2010, plus oil usage to be determined.

### **Tenant's application**

In making this application the tenant is seeking to recover the rent paid for the rental unit for December 2010 and January 2011 plus the return of the security deposit for a total claim of \$1,675.00.

The tenant submitted that he is entitled to recover the rent he paid for the rental unit for the following reasons:

- when he moved into the upper rental unit he had to do some cleaning,
- the unit had only two-prong electrical outlets,
- some of the stove elements did not work,
- there was a flea infestation,
- the landlord sprayed for fleas but it did not rid the unit of fleas,
- the tenant purchased pesticide himself and sprayed the unit again,
- the tenant slept in the living room to escape the fleas,
- at the end December the parties agreed the landlord would hire a professional exterminator for January 1, 2011 and the rent for January 2011 would be discounted to \$550.00.

The tenant explained that in early January 2011 the exterminator did not appear and the landlord presented the tenant with a hydro bill. The tenant did not agree that he owed

for hydro. The tenant received a 10 Day Notice and decided to move-out of the rental unit.

The landlord responded to the tenant's submissions as follows:

- the previous tenant had pets,
- the landlord was of the understanding the unit was quite clean but that the tenant would like to do more cleaning due to tenant's pet allergies,
- the landlord's daughter, acting as agent for the landlord, told the tenant in entering the tenancy agreement that the tenant would have to put hydro in his name and would be responsible for heating oil,
- the tenant had stated he did not want the hydro in his name because of the requirement to pay a deposit but the parties agreed the tenant would pay the landlord for hydro,
- the tenant was using space heaters,
- the landlord purchased converters upon hearing from the tenant about the two-pronged electrical outlets,
- the tenant's rent was discounted for January 2011 in recognition of the flea products purchased by the tenant and cleaning done by the tenant,
- the exterminator was not scheduled for January 1 as that is a holiday,
- the exterminator was scheduled for January 2, 2011 but was cancelled because the tenant informed the landlord that he was moving out in late December 2010,
- the new tenants have not complained about fleas and the landlord never saw fleas in the rental unit.

### **Landlord's application**

The landlord is seeking compensation for a ceiling repair (\$50.00), hydro (\$179.00), heating oil (\$100.00) and a new front door lock set (\$179.00) since the tenant did not return the keys.

The parties were in disagreement as to whether the terms of the tenancy required the tenant to pay for utilities.

The landlord did not provide supporting evidence to substantiate the damage to the ceiling or the cost of utilities or the cost of the new lock set.

### **Analysis**

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of

probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Upon consideration of all of the evidence before me, including the verbal testimony provided during the hearing, I make the following findings with respect to each of the applications.

### **Tenant's application**

The tenant paid rent in accordance with the terms of their verbal tenancy agreement, or as otherwise agreed to by the parties. Therefore, I do not find the tenant paid any additional rent and the tenant is not entitled to recover such monies from the landlord.

When a tenant is in need of repairs or fumigation, in order to mitigate their loss, the tenant is expected to notify the landlord of the problem and provide the landlord a reasonable amount of time to take sufficient action. If the landlord will not take sufficient action, the tenant is at liberty to seek repair orders by making an Application for Dispute Resolution. The tenant did not make an application for repair orders. Rather, the main dispute between the parties appears to hinge on the hydro consumption. Nonetheless, I have considered whether the tenant's need for repairs or fumigation entitled the tenant to compensation.

I heard testimony that the landlord responded to the tenant's complaint regarding the two-prong electrical outlets by purchasing converters. I was not provided evidence indicating the tenant complained of stove elements not working. I also heard testimony that the landlord compensated the tenant for the cleaning he did at the beginning of the tenancy by way of the rent reduction in January 2011.

With respect to the flea infestation, I am satisfied the tenant complained of this to the landlord and the landlord responded by purchasing flea treatment from the veterinarian and spraying the unit. Upon further complaint by the tenant, the landlord agreed to compensate the tenant for further products purchased by the tenant. Finally, I am satisfied the landlord made arrangements for an exterminator when the tenant advised the landlord that fleas continued to be a problem. Although the landlord cancelled the

exterminator, I find there is a reasonable likelihood that this was done because the tenant had informed the landlord he was going to vacate the unit.

In light of the above, I find the tenant has been sufficiently compensated by way of the rent reduction given in January 2011 and that the tenant decided to end the tenancy before further remedies were explored. Therefore, I deny the tenant's claim for compensation against the landlords.

### **Landlord's application**

In the absence of condition inspection reports, photographs, or receipts or invoices, I find the landlord failed to substantiate the landlord's claims against the tenant in accordance with the requirements outlined above. Therefore, the landlord's claims against the tenant are denied.

### **Security deposit**

As the landlord failed to complete condition inspection reports, the landlord's right to claim against the security deposit is extinguished. Further, the landlord has not established an entitlement to a Monetary Order against the tenant. I am satisfied the tenant has given the landlord a forwarding address; therefore, I order that landlord to return the security deposit of \$325.00 to the tenant immediately.

Provided with this decision is a Monetary Order in the amount of \$325.00 for the tenant to serve upon the landlord. The Monetary Order may be enforced in Provincial Court as an Order of that court as necessary.

### **Conclusion**

Neither party established an entitlement to compensation against the other party. The landlord has been ordered to return the tenant's security to him immediately. The tenant has been provided a Monetary Order in the amount of \$325.00 to serve upon the landlord.

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 05, 2011.

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Residential Tenancy Branch