



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      Landlord: MNR, MNSD, FF  
Tenant: MNSD, FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution with both parties seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord and the tenant.

The tenant's Application used a different first name for the landlord but at the outset of the hearing the tenant amended his Application to reflect the landlord's correct name.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for utilities; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled to a monetary order for compensation for harassment; for return of double the amount of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act*.

### Background and Evidence

The parties agree the tenancy began in August or September 2001 and ended at the end of June 2012. The parties also agree that during the tenancy rent was due on the 1<sup>st</sup> of each month and the amount of rent at the end of the tenancy was \$725.00. The parties agree the landlord holds a security deposit in the amount of \$338.00.

The landlord seeks to retain the security deposit and obtain a monetary order for gas utilities not paid by the tenant during the tenancy. The landlord has submitted a gas utility invoice dated August 31, 2011 for \$940.07 for the period December 10, 2010 to February 22, 2011 and an overdue bill – final notice dated September 8, 2011 for gas utility in the amount of \$1,692.69 citing the tenant owed 40% of the \$1,667.69 or a total of \$667.07.

The landlord testified that she had tried to get the tenant to pay the utility charges since the end of August 2011 and that he refused until he received a detailed bill showing the charges. She further stated that once she provided the bill to the tenant he stated it was not the bill he was looking for and he continued to refuse to pay it.

The tenant testified that he had paid his bills to the tenant who lived upstairs but that he did not pay the bill or rent and completely destroyed the unit upstairs. The landlord testified that she knows the tenant did not pay the utility bills to the upstairs tenant at this time (Spring 2011) because that tenant did not pay the utilities at all.

The tenant submits that he had always paid the utilities and rent in cash but that the landlord refused to provide receipts for any of the transactions. The landlord did not provide any receipts or tenant ledgers showing an accounting of any tenant payments for rent and/or utilities. The landlord testified that she always issued receipts.

The tenant submits that he provided the landlord with his forwarding address verbally at the end of the tenancy and twice by registered mail. The landlord confirmed that her daughter signed for the first registered mail package with the tenant's forwarding address while she was away in July 2012 and that she returned on July 27, 2012 but did not get the letter from her daughter until early August 2012. The landlord confirmed that this would mean that her daughter accepted the registered mail before July 27, 2012.

The tenant also submits that the landlord had never mentioned any issues about the gas utilities until he had formally requested the return of his deposit. The tenant further submitted that the landlord had never spoken to her about paying this bill in the fall of 2011; that he had requested an itemized bill; that he then refused to pay it still; and that the landlord never once during the tenancy asked him to pay it.

The tenant seeks compensation in the amount of \$1,000.00 for harassment. The tenant submits that the landlord has harassed him by pursuing these hearings and that as a result he has had to pay for 4 or 5 trips to the Residential Tenancy Branch; for additional gas for those trips; time off work and he endured the landlord's attempts to evict him during the tenancy.

### Analysis

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address in writing, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

While I find it is likely the landlord received the tenant's forwarding address earlier than July 27, 2012, from the landlord's testimony I accept her agent (her daughter) received the tenant's forwarding address in writing sometime prior to July 27, 2012 and as such I find

the landlord had until August 10, 2012 to either return the security deposit in full or file an Application for Dispute Resolution to claim against the deposit.

The landlord's Application for Dispute Resolution was submitted on August 14, 2012 and as such, I find the landlord has failed to fulfill her obligations under Section 38(1) and the tenant is entitled to double the security deposit in accordance with Section 38(6).

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

While I acknowledge the landlord has provided one invoice for gas utility charges for the period between December 2010 and February 2011 and a final notice dated September 8, 2011, I find that these invoices and notices do not in themselves confirm the tenant did not pay these utilities.

As the tenant disputes that these bills were unpaid and as the burden to prove her claim it is incumbent upon the landlord to provide sufficient evidence to establish that he has not paid them. For example, the landlord testified that she provided the tenant with receipts for all cash payments; she could have provided the receipts she has issued to show what payments she had received or a tenant ledger that would list outstanding payments.

In addition the landlord testified that none of these issues were addressed in writing but had she provided written demand letters she could have used these as evidence to support her claim that she had been pursuing these matters throughout the tenancy.

For these reasons, I find the landlord has failed to provide sufficient evidence that the tenant has failed to pay these utility charges and I dismiss the landlord's Application without leave to reapply.

As to the tenant's claim for harassment, the tenant has provided no evidence of any harassment during the tenancy, including his claims that the landlord had tried to evict him. In addition the landlord's act of applying for dispute resolution seeking what she believes to be monies owed to her as a result of a tenancy is her right under the *Act* for up to 2 years from the end of the tenancy.

I cannot find that the landlord breached or violated the *Act* by pursuing her claim in her Application and therefore is not obligated to compensate the tenant for any form of harassment. I dismiss this portion of the tenant's Application.

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$717.37** comprised of \$676.00 double the security deposit; \$16.37 interest on the security deposit; and \$25.00 of the \$50.00 fee paid by the tenant for this application as he was only partially successful in his claim.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

As the landlord was not successful in her Application I dismiss he request to recover the filing fee.

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: October 26, 2012.

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Residential Tenancy Branch