

## **DECISION**

### **Dispute Codes**

For the landlords: MND MNR MNSD MNDC FF

For the tenants: MNDC MNSD FF

### **Introduction**

This hearing dealt with cross applications for Dispute Resolution by the parties under the *Residential Tenancy Act* (the “Act”).

The landlords applied for a monetary order for damage to the unit, site or property, money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for unpaid rent or utilities, to keep all or part of a security deposit, and to recover the filing fee.

The tenants applied for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and for the return of all or part of their security deposit, and to recover their filing fee.

The tenants and the landlords appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

### **Preliminary and Procedural Matters**

Both parties claimed at the outset of the hearing that they amended their applications to a higher monetary amount. The parties were advised that their applications were not properly amended through the Residential Tenancy Branch and that their applications could not be amended through the submission of evidence as that would be prejudicial to the other party.

As a result, the tenants decided to withdraw their application in full and are at liberty to submit their application again with the correct amount.

The landlords decided to withdraw only the damages portion of their claim and to proceed with their claim for unpaid utilities and to retain all or a portion of the security deposit due to the unpaid utilities.

Given the above, the hearing continued with consideration of the landlord's claim for unpaid utilities, to retain the tenants' security deposit and to recover their filing fee.

### Issues to be Decided

- Are the landlords entitled to a monetary order for unpaid utilities under the *Act*?
- What should happen to the security deposit under the *Act*?

### Background and Evidence

A month to month tenancy began on July 1, 2007. Monthly rent in the amount of \$1,200.00 was due on the first day of each month. The tenants paid a security deposit of \$600.00 which has accrued \$13.61 since the start of the tenancy for a total security deposit being held by the landlords of \$613.61.

The parties agreed that the tenants vacated the rental unit on October 1, 2012. The tenants acknowledged during the hearing that they owe \$546.45 in unpaid utilities. The tenants did not dispute the amount of utilities being claimed by the landlords as a result.

The tenants vacated the rental unit on October 1, 2012. The landlords filed their application to retain the tenants' security deposit on October 15, 2012. The parties agreed that the tenants provided their forwarding address on the move-out condition inspection report dated October 1, 2012. The parties also agreed that both a move-in and a move-out condition inspection report were completed.

### Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

**Landlord's claim for unpaid utilities** – The tenants did not dispute that they owe the landlords \$546.45 in unpaid utilities. Section 38 of the *Act* states:

### **Return of security deposit and pet damage deposit**

**38** (1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

**(a) the date the tenancy ends, and**

**(b) the date the landlord receives the tenant's forwarding address in writing,**

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

**(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.**

[emphasis added]

Based on the above, I find the landlords **did not** breach section 38 of the *Act* and did file their application claiming against the security deposit. The parties also agreed that both a move-in and move-out condition inspection report were completed. Therefore, based on the testimony of the tenants that they owed \$546.45 in unpaid utilities, **I find** the landlords have met the burden of proof and have established a monetary claim of \$546.45 for unpaid utilities.

As the landlords were successful in their application, **I grant** the landlords the recovery of the filing fee in the amount of **\$50.00**.

**Monetary Order** – I find that the landlords have established a total monetary claim of **\$596.45** comprised of \$546.45 in unpaid utilities and the \$50.00 filing fee and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit as follows:

Unpaid utilities	\$546.45
Filing fee	\$50.00
<b>Subtotal</b>	<b>\$596.45</b>
Less tenants' security deposit of \$600.00 plus interest of \$13.61	-\$613.61
<b>TOTAL BALANCE OWING TO TENANTS</b>	<b>\$17.16</b>

I find that the landlords owe the remaining security deposit balance of **\$17.16** to the tenants. Accordingly, **I grant** the tenants a monetary order in the amount of **\$17.16**. This order must be served on the landlords and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

### Conclusion

I find that the landlords have established a total monetary claim of \$596.45. I authorize the landlords to retain \$596.45 of the tenants' security deposit of \$613.61 including interest, in full satisfaction of their claim. I grant the tenants a monetary order in the amount of \$17.16 comprised of the balance owing from the remainder of the tenants security deposit. This order must be served on the landlords and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: January 22, 2013