



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for money owed or compensation for damage or loss and for recovery of the filing fee.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, each party confirmed that they had received the other party's evidence, with the exception the tenant's evidence submitted on December 31, 2012. The tenant said that she had not delivered this 5 page evidence package to the landlord and even though I have excluded it from consideration it for purposes of this decision, I nonetheless did not find it relevant.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant evidence regarding the facts and issues in this decision.

### Issue(s) to be Decided

Is the tenant entitled to a monetary order and to recover the filing fee?

### Background and Evidence

Although the written tenancy agreement stated that this tenancy began on May 1, 2003, the tenant said that it began in 2004, for an original 4 year fixed term. Monthly rent began at \$1325.00 and the tenant said currently monthly rent is \$1444.56. The

evidence shows that the tenant paid a security deposit of \$662.50 at the beginning of the tenancy.

The first written tenancy agreement states that the tenant will “pay rates for 40% of the utilities, water, and garbage resulting from the Tenant’s occupancy and to save the Landlord harmless to these costs;”

The evidence shows that on April 7<sup>th</sup>, 2009, the parties executed another tenancy agreement, which among other things stated that “Tenant has agreed to pay 40% of the utility costs, consisting of Electrical, Gas, Water, Sewer, Garbage, Dyking charges. These charges will be forwarded to the Tenant to pay from time to time from the land lord.”

This tenancy agreement was for a fixed term of three years, to expire on April 30, 2012.

The parties agree that this tenancy has continued beyond that term, without an additional written tenancy agreement being signed.

The parties state that the rental unit is on the upper floor and that the landlord is owner of a daycare school in the lower floor, as it has been since the beginning of the tenancy.

The tenant’s monetary claim is in the amount of \$2756.72.

In explanation, the tenant said that this amount is to compensate her for what she claimed was an excessive water bill charge, which has now been paid to the landlord.

The tenant said that in 2011, she began complaining to the landlord that the water bills had suddenly become too large and that she should not be obligated to pay her customary 40%.

The tenant claimed that the water bill account had been changed from residential to commercial, as confirmed by the municipality, and that therefore the rates has increased. Also, according to the tenant, the municipality informed her that the water rate for a dwelling such as the rental unit should be much lower.

The tenant did not provide evidence of her communication with the municipality, although she said that she could obtain the same.

The tenant also stated that the landlord failed to send her copies of the billing statements, as is her right to see them, and that the landlord has failed to be reasonable

in addressing a cause of the large increase, such as a possible water leak. The tenant also asked that her upper floor be placed on a separate meter.

I find it important to note at this point that the tenant has previously filed for dispute resolution, the hearing for which was conducted on May 9, 2009, in which the tenant sought the landlord's compliance with the Act or tenancy agreement, alleging that the landlord was asking for excessive water charges on a shared meter with his school on the ground floor.

That hearing resulted in a dismissal of the tenant's application, without leave to reapply, as the tenant failed to attend the hearing.

The tenant concluded by saying that tenancy agreement in which she agreed to pay 40% of the water charges had expired and that the parties no longer had such an agreement and further that she is not refusing to pay a reasonable amount for water, but for the excessive amount for which the water rates had become.

In response, the landlord said that the water billing had been increased by the municipality every year and that it was not out of line with normal increases. The landlord said that the water bill had always been a commercial account and that he investigated with the city, being informed that commercial rates and residential rates were the same, taking into account usage.

The landlord said several factors were at play when the parties agreed to the 60/40% split, including the fact there were no baths or showers in the school and the toilets were 1 gallon capacity, as compared to a 5 gallon capacity in the upper floor.

The landlord said there was no deficiency on his part as to investigating any problem with the water bill and that this arrangement had been in place since the tenancy began.

The landlord contended that when the tenant approached him in November 2011 about the unfair costs of the water, he informed her that the 40% had been in place since the beginning of the tenancy, and that she could renegotiate a new lease in 5 months when the fixed term expired.

### Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the claiming party, the tenant in this case, has to prove, with a balance of probabilities, four different elements:

**First**, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the party took reasonable measures to mitigate their loss.

*Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.*

As to the tenant's position that the tenancy agreement the parties signed on April 7, 2009, wherein the tenant agreed to pay 40% of the water and sewer for the residential property, expired and that she no longer was so obligated, Section 44 (1) (b) of the Residential Tenancy Act provides that a fixed term tenancy ends only if the tenancy agreement provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy.

Section 44 (3) states that if a tenancy agreement does not require the tenant to vacate the rental unit on that date specified as the end of the fixed term and the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

I find that to be the case before me and that the tenancy agreement of April 7, 2009, has now converted to a month to month tenancy. As such, the tenant remains obligated to pay 40% of the water and sewer bill for the premises, which includes a school as it always has.

I next considered whether or not the tenant has met her burden of proof for monetary compensation and conclude that the tenant failed to meet step 2 of such proof as she has submitted insufficient evidence that the landlord has violated the Act or the tenancy agreement. Rather, I find the landlord was acting within his rights under the tenancy agreement of collecting 40% of the water and sewer bill from the tenant.

The tenant's contention that the landlord was not fully cooperative in investigating the cause of the increased water bill was most likely the subject of her previous application seeking the landlord's compliance, which was dismissed, without leave to reapply.

As I find the tenant failed to meet the second step of her burden of proof, I dismiss her monetary claim, without leave to reapply.

As I have dismissed the tenant's monetary claim, I also dismiss her request to recover the filing fee.

### Conclusion

The tenant's application for a monetary order is dismissed, without leave to reapply.

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: January 07, 2013.

