



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNR, FF

### Introduction

This hearing dealt with the landlord'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, for authority to retain the tenant's security deposit and for recovery of the filing fee.

The landlord's agent appeared; the tenant did not appear.

The landlord gave evidence that she served the tenant with the Application for Dispute Resolution and Notice of Hearing by registered mail on October 24, 2012. The landlord provided the tracking number for the registered mail and the receipt.

I find the tenant was served notice of this hearing in a manner complying with section 89 of the Residential Tenancy Act (the "Act") and the hearing proceeded in the tenant's absence.

The landlord was provided the opportunity to present her evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

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 landlord entitled to retain the tenant's security deposit, to a monetary order and to recover the filing fee?

### Background and Evidence

The landlord gave evidence that this tenancy began on July 1, 2011, that the landlord received an order of possession for the rental unit effective for October 31, 2012, and that the tenant vacated the rental unit by November 12, 2012.

The landlord said that the original monthly rent was \$800.00 for the basement suite and that the tenant paid a security deposit of \$400.00 at the beginning of the tenancy. The landlord said that the tenant provided no written forwarding address.

The landlord's monetary claim is in the amount of \$4750.74. In explanation of this amount, the landlord pointed to the tenant ledger sheet. I note that a detailed calculation was not attached to the application for dispute resolution as required.

The landlord further stated that beginning in May 2012, the tenant began renting the entire house and that the agreed upon monthly rent was \$1800.00; however the landlord said that they had an agreement with the tenant that she was to receive free rent of \$1000.00 for the upper unit for both May and June 2012 provided the tenant paint and clean the upper suite.

The landlord admitted that there was never a new tenancy agreement signed with the tenant confirming the arrangement.

The landlord said that the amount listed in the monetary claim included unpaid utilities, but a specific amount was not provided other than entries on the tenant ledger sheet. It is important to note that the entries, shown as "charges," for the unpaid utilities in the running total appear again at the end of the listing, again shown as "charges," giving the appearance of duplicating the charge to the tenant. The landlord agreed that the second listing of charges for the unpaid utilities, which were 10 entries, should be deducted from the total amount claimed.

A specific breakdown listing unpaid utilities was not provided in the landlord's written submission as requested on their application; however the landlord made calculations during the hearing and provided testimony that the amount should be \$1921.01, plus a NSF charge of \$25.00 and a late fee of \$5.00.

In explanation upon query, the landlord's agent, who is the property manager, explained that the owner of the rental home would send the property manager the utility bills and the property manager would pay the bills and bill the tenant.

As to the balance of the monetary claim, for unpaid rent, the landlord said the amount claimed as unpaid utilities should be deducted from the total amount of their monetary claim, leaving the balance as unpaid rent. Again no detailed calculation by the applicant was provided into evidence for this claim.

The landlord's relevant evidence included copies of photographs of the rental unit, a 10 Day Notice to End Tenancy for Unpaid Rent listing the tenant's name and the tenant ledger sheet.

### 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 landlord 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.

On the subject of whether or not the parties agreed to an increased amount of rent beginning in May 2012, to \$1800.00 for the entire home and to a further reduction in rent for May and June 2012 for labour, I find the landlord failed to provide sufficient evidence that this was the case. I find the tenant ledger sheet without further written proof was insufficiently clear to establish that the rent had increased and that the tenant agreed to such an amount. I note that the 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") issued by the landlord on August 28, 2012, listed the rental unit as "B," followed by the street address, with no explanation as to whether "B" was the basement suite or the entire house. I further note that the amount listed as unpaid rent on August 1, 2012 on the Notice was \$753.33; however the tenant ledger sheet on that same date showed the amount of \$3735.33 as being owed by the tenant.

As I have found that the tenant ledger sheet contained contradictions, such as a different listing of unpaid rent on August 1, 2012, on the 10 Day Notice to End Tenancy for Unpaid Rent than on the sheet and the duplication of unpaid utilities, and lack of clear testimony from the landlord's agent or exact accounting records of a breakdown of each claim loss, or calculation listed in the landlord's application for dispute resolution, I found I could not rely upon the landlord's evidence to establish the amount of rent owed by the tenant.

Further, as to the landlord's claim that the tenant owed \$1000.00 for both May and June 2012 for labour to the rental unit, I find this agreement, if true, is a contract for services. As such, I find that disputes over service contracts must be resolved in another legal forum, likely Provincial Court (Small Claims Division) as the Act does not provide an Arbitrator jurisdiction over the dispute over service or employment contracts.

However, the parties should seek their own legal advice on how to resolve these disputes.

As I was unable to determine the amount of unpaid rent said to be owed by the tenant, for the reasons stated above, I find the landlord submitted insufficient evidence to prove an entitlement to a monetary award for unpaid rent and I dismiss that claim, without leave to reapply.

As to the unpaid utilities, I was not provided copies of bills, or billing statements said to be sent to the tenant, or proof that the landlord's agent paid such bills, and I therefore find the landlord submitted insufficient evidence to meet the third step of their burden of proof. I therefore dismiss their claim for unpaid utilities, without leave to reapply.

As I have dismissed the landlord's monetary claim, I likewise dismiss their claim for recovery of the filing fee of \$50.00.

As to the tenant's security deposit, I have not ordered the landlord return this amount as I have no proof that the tenant provided her written forwarding address.

### Conclusion

The landlord's application 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 28, 2013

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Residential Tenancy Branch

