



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNR, MNDC, FF  
                             MNDC, MNSD, FF

### Introduction

This hearing was convened by way of conference call concerning applications filed by the landlord and by the tenant. The landlord has applied for a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the tenant for the cost of the application. The tenant has applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for a monetary order for return of all or part of the pet damage deposit or security deposit; and to recover the filing fee from the landlord for the cost of the application. The tenant's application requests an order for double the amount of the security deposit.

The parties attended the hearing, gave affirmed testimony, and provided evidentiary material prior to the commencement of the hearing. Some of the evidence provided by the landlord was not received within the time required under the *Residential Tenancy Act* and Rules of Procedure, and the tenant did not oppose the inclusion of that evidence, however, a portion of the tenancy agreement was not included in the package provided to the Residential Tenancy Branch or to the tenant.

The tenant also called 2 witnesses who gave affirmed testimony. The parties were given the opportunity to cross examine each other and the witnesses on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No further issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for unpaid rent or utilities?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Has the tenant established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Has the tenant established a monetary claim as against the landlord for return of all or part or double the amount of the pet damage deposit or security deposit?

Background and Evidence

The landlord testified that this fixed term tenancy began on October 4, 2012 and was to expire on April 1, 2013, however the tenant moved out of the rental unit on January 27, 2013. Rent in the amount of \$3,000.00 per month was payable in advance on the 1<sup>st</sup> day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$1,500.00 and no pet damage deposit was collected.

The landlord further testified that the tenant sent a text message to the landlord on January 24, 2013 stating that the tenants would be leaving on the 27<sup>th</sup> of January, 2013. A walk through was conducted by the parties and the keys to the rental unit were returned to the landlord.

On January 14, 2013 the tenant had called the landlord advising that there was water in the warehouse on the property, and that a pipe had probably burst. The landlord sent a plumber who showed at about 10:00 a.m. the following morning. The landlord believed that had solved the problem and didn't know that the tenant still had no water. The landlord called and asked the tenant who replied that there was still no water.

On the 16<sup>th</sup> of January, 2013 the tenant attended to the landlord's home and provided a letter stating that water would have to be restored by January 18, 2013. The landlord testified that that was the first that the landlord heard that the tenant still had no water. On January 18, 2013 the landlord told the tenant that rent for the month of February, 2013 would be reduced by the number of days that the tenant was without water, but the tenant stated that the tenant was not interested in a rent reduction. The landlord

learned that the plumber fixed the pipe but didn't prime the pump so water wasn't flowing.

The landlord called another plumber on January 22, 2013 who properly primed the pump and also repaired the pipe that had caused the leakage. The landlord has provided copies of invoices to substantiate the visits by plumbers.

On January 24, 2013 the tenant sent a text message to the landlord's spouse confirming that water had been restored. The same day, the landlord also received a text message from the tenant stating that the tenant wanted to move before the end of January, 2013 and wanted to do a walk-through of the rental unit and return the keys, which was completed. At no time did the parties discuss ending the tenancy early.

The rental unit was re-rented for March 1, 2013. The landlord applied to amend the application for dispute resolution to reduce the amount of rent claimed to 1 month.

The landlord further testified that some repairs had to be made, but the rental unit was advertised as available for February 15, 2013 on Craigslist and KIJJI, which are free on-line advertising websites. The rental unit consists of an acreage, and the landlord had originally advertised for \$3,000.00 per month but found no interested tenants for the full property, but a lot of interest for the house alone. The advertisements had run out before finding a tenant, and the house alone, and not the remaining property, was re-rented for \$1,400.00 per month.

The landlord further testified that the landlord tried to reimburse the tenant for loss of water, and the landlord has never received the tenant's forwarding address in writing. During cross examination, the landlord corrected that testimony stating that the tenant's forwarding address was received by registered mail but the landlord does not recall the date.

The tenant testified that the landlord called the tenant and knew full well on January 15, 2013 that the tenant had no water. Text messages were also exchanged between the parties on January 16, 2013.

The tenant further testified that prior to the commencement of the tenancy the advertisement had about 8 photographs, and the advertisements placed after the tenant moved out weren't nearly as elaborate. The tenant stated that the landlord didn't mitigate any loss by failing to properly advertise the acreage.

The tenant's first witness testified to observing that the tenant had no water on January 21, 2013, and that the tenant went to the witness' home, about a 20 minute drive, every day for water. The witness was also present for the walk-through of the rental unit on January 27, 2013, and observed that the rental unit was left in satisfactory condition.

During cross examination, the witness testified that a plumber was called and fixed the pipe by January 22, 2013. The witness asked the tenant at that time if the plumber had primed the pump but the tenant didn't know. The tenant was going to inquire with the landlord, but the witness does not know the result of that conversation.

The other witness of the tenant testified to being at the landlord's house on January 16, 2013 with the tenant. The witness heard the tenant ask the landlord several times to call a pump specialist. The witness is aware that the landlord made multiple attempts on January 15 and January 22, 2013 and the landlord's spouse also tried to prime the pump prior to that. The landlord also attended the rental unit on the 18<sup>th</sup> of January, 2013.

The landlord made closing submissions, which include the testimony that the landlord is entitled to compensation for loss of revenue for the month of February, 2013; the tenant broke the lease although the water problem was fixed and multiple attempts were made by the landlord to correct the water issues. There was, therefore, no reason to break the lease once the water was fixed, and the landlord requests to keep the security deposit. The landlord thought that the landlord would be entitled to keep the security deposit to cover the unpaid rent. The landlord applies for a monetary order in the amount of \$3,000.00 for one month of rent and asked to keep the security deposit in partial satisfaction of that claim, but has not indicated a claim to keep the security deposit in the Landlord's Application for Dispute Resolution.

The tenant's submissions include the testimony that the landlord kept the security deposit despite having the tenant's forwarding address in writing, and the landlord never had a right to do so. The tenant had secured a new place to live before the water was fixed. The landlord failed to send out any experts between January 15 and 22, 2013. Further, the landlord's advertisements were not a good attempt to re-rent. The tenant applies for a monetary order in the amount of \$4,741.86, being 18 days of rent at \$96.77 per day which equates to \$1,741.86, and double return of the security deposit in the amount of \$3,000.00.

### Analysis

Firstly, dealing with the landlord's application for a monetary order for unpaid rent or utilities, I am unable to find, in the circumstances, that the tenant had a legal reason to

end the tenancy. Although I am not satisfied with the landlord's testimony that the landlord didn't know that the water problem hadn't been corrected after sending the first plumber, the tenant was offered a reduction in rent and refused it. The water issue was a problem, not throughout the tenancy, but for 10 days or less. The parties entered into a fixed term tenancy, the parties had no discussions with respect to ending the tenancy early, and the tenant arbitrarily decided that the rental unit was not inhabitable even after the water issue had been fully repaired. The tenant gave submissions that a new home was secured prior to the water issue being repaired. Further, with respect to the tenant's testimony that the landlord did not do what was necessary to mitigate the loss of rent by not advertising as elaborately as the landlord had before this tenancy began, had the tenant given the landlord one month's notice to end the tenancy, the tenant would still be required to pay rent for the month of February, 2013. I find that the landlord has established a claim as against the tenant for one month of rent.

With respect to the tenant's application for a monetary order for recovery of a portion of the rent in the month of January, 2013, I have reviewed the evidence, and it's clear that the water issue started on January 14, 2013 and was corrected in full by January 24, 2013. I do not agree that the tenancy was frustrated. A tenancy is frustrated if the issues cannot be corrected, and I find that the issues were correctable and were corrected by the landlord. The tenant has claimed 14 days, and I find that the tenant is only entitled to reimbursement of a portion of that. The parties agree to the dates of the lack of water, and I find that for the month of January, which has 31 days, the daily rental amounted to \$96.77. The tenant is entitled to recovery of 10 days, or \$967.70.

The *Residential Tenancy Act* requires a landlord to return a security deposit in full or apply for dispute resolution claiming against the security deposit within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, whether or not the tenant has breached the terms of the tenancy agreement or has breached the *Residential Tenancy Act*. If the landlord fails to do either, the landlord must be ordered to repay the tenant double the amount of such deposit. In this case, I find that the tenant moved out of the rental unit on January 27, 2013, although rent was paid for the month of January, 2013. The tenant provided the landlord with a forwarding address in writing on January 27, 2013 by registered mail. The landlord originally testified that no forwarding address was received, and then during cross examination stated that it was received by registered mail but the landlord did not recall the date. The tenant has provided evidence of having sent the registered mail on January 27, 2013 and states in the evidence package that the landlord received it on February 4, 2013 but has provided no evidence of that. The *Act* states that documents served in that manner are deemed to have been received by the recipient 5 days after such mailing, and in the absence of any evidence or testimony to the

contrary, I find that the landlord is deemed to have received the tenant's forwarding address in writing on February 1, 2013. The landlord filed the application for dispute resolution on January 24, 2013 but did not make a claim as against the security deposit, and I find that the landlord did not return the security deposit within 15 days or apply to keep it within that 15 day period as required by the *Act*. Therefore, the tenant is entitled to recovery of double the amount of the security deposit, or \$3,000.00.

With respect to the tenant's claim that the landlord is not entitled to claim against the security deposit because no move-in condition inspection report was completed, the *Act* states that the consequence for failing to do so is that the landlord's right to claim against the security deposit for damages is extinguished. It does not say that the landlord's right to make a claim for damages is extinguished, nor does it say that the landlord's right to make a claim against the security deposit for unpaid rent is extinguished. The issue before me is that the landlord did not make a claim against the security deposit at all.

The *Act* also permits me to set off amounts owing from one party to the other, and as such, I find that the tenant is entitled to the difference in the amount of \$967.70.

Since both parties have been partially successful with the applications, I decline to order that either party recover the filing fee from the other.

### Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$967.70.

This order is final and binding on the parties and may be enforced.

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: April 23, 2013

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Residential Tenancy Branch