



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNDC, FF

### **Introduction**

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlord by mailing by registered mail on April 9, 2013. With respect to each of the applicant's claims I find as follows:

### **Issues to be Decided**

The issues to be decided are as follows:

- a. Whether the tenant is entitled to a monetary order and if so how much?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

### **Background and Evidence:**

The tenancy began on or about August 10, 2012 and ended on January 23, 2013. The tenancy agreement described the rent as \$2038 per month payable on the 15<sup>th</sup> day of each month. The tenant(s) paid a security deposit of \$1500 at the start of the tenancy. The security deposit has been returned and it is not an issue in these proceedings.

The landlord is a part owner of a car dealership whose initials are MGMM. The tenant was employed by a car dealership and was given a \$3000 advance by MGMM to be applied to housing. There is a dispute between the parties as to whether the tenant as an employee has an obligation to return a portion of that sum to MGMM.

The tenancy agreement is unclear. It provides that the rent is \$2038 per month payable on the 15<sup>th</sup> day of each month. It also provides that electricity and heat is included in the rent. There is a handwritten notation in the box for additional information as follows: Gas 74/mth. Hydro 164/mth = 238." The determined that the parties agreed that the tenant was responsible for paying the actual gas and hydro bills. The agreement further provided this would be accomplished with the landlord collecting \$238 per month for those bills, there would be a reconciliation with the Tenant being responsible only for what was actually used and if the landlord had collected more than the actual usage the tenant would be reimbursed this sum.

There is a dispute between the parties as to what happened at the end of the tenancy. The landlord alleged there was an agreement in writing between the parties that he would reimburse the tenant the amount the tenant has overpaid and the tenant would agree that he (the tenant) would pay MGMM a portion of the housing advance. The problem is compounded as the landlord failed to produce a document allegedly made on the date the Tenant left the dealership (January 15, 2013). The landlord did not have a sufficient explanation as to why that document had not been produced prior to the hearing. Further he did not have the document in his possession (which would have enabled him to read the document at the hearing).

The tenant initially denied signing any document when he left his employment. Later he revised his testimony and stated that he may have signed a document at that time but he was uncertain as to its contents and that he was not provided with a copy. He further testified that he recalls a document being prepared which dealt with the payment of the security deposit and his responsibility for the proportionate share of rent. Further,

the tenant disputes the allegation of the landlord that he owes MGMM for reimbursement of any housing advance and submits that if MGMM takes that position it is open to them to file a claim in civil court.

The tenant testified that he has completed a reconciliation the landlord owes him the sum of \$558.44 after subtracting the amount actually paid from the amount of hydro and gas that was used.

The tenant relies on document prepared by the landlord in his handwriting dated March 23, 2013 which the landlord appears to acknowledge that he owes the tenant \$558.44 but states the tenant owes the MGMM \$383.38 for reimbursement of a portion of the housing advance and proposed that he (the landlord) cut a cheque made payable to MGMM for reimbursement of the housing advance in the sum of \$383.38 and a seconded cheque for the balance in the sum of \$175.06 payable to the tenant. The tenant emailed the landlord immediately upon receiving this proposal saying that he was not in agreement with it and that his tenancy has nothing to do with his employment.

#### Analysis

The written tenancy agreement is unclear. However, after hearing the disputed evidence I determined the parties agreed that the tenant was responsible to pay the actual gas and hydro costs and this would be paid by the landlord collecting \$238 per month, that a reconciliation would be done between the \$238 per month paid and the actual cost of usage and if the landlord collected monies in excess of actual usage this money would be reimbursed to the tenant. The tenant testified as to this agreement and the landlord did not substantially dispute this evidence.

I determined that the landlord owes the tenant the sum of \$558.44 for this overpayment.

There is a dispute as to whether the tenant owes his employer MGMM a portion of a housing advance that his employer paid. The landlord submits that the tenant agreed in writing that this could be deducted from the \$558.44. The tenant denies agreeing to

such a deduction and denies that he owes MGMM any money. The landlord failed to produce the document which supports this allegation and did not have it in his possession at the hearing (as a result he was unable to read the contents). The parties are expected to ready to proceed on the date of the hearings and the Rules of Procedure provide that the parties are to exchange documents at least 5 clear days before the hearing. I determined that it was not appropriate to permit the landlord to introduce this evidence after the close of the hearing as the landlord failed to provide an adequate explanation as to why he failed to follow the Rules of Procedure.

Further, this raises an issue as to the jurisdiction of an arbitrator under the Residential Tenancy Act. An arbitrator's jurisdiction is limited to Residential Tenancy Act matters. The tenant disputes that he owes MGMM any money. He also disputes that he agreed any such sum could be deducted from the amount the landlord owes him. MGMM is not a party to these proceedings as it is not a landlord. I do not have the jurisdiction to determine whether the tenant as an employee owes MGMM any money as that is not a Residential Tenancy Act matter. It follows that it would not be appropriate for an arbitrator to consider whether the landlord has a right to set off any amounts the tenant may owe to MGMM (if any) from an amount he owes to the tenant where the tenant disputes the claim. MGMM has a right to file a claim against its employees (the tenant) in civil court for reimbursement of any monies that may be owing but this does not relieve the landlord of his obligation to pay any money he owes the tenant.

As a result I determined the landlord owes the tenant the sum of \$558.44.

Monetary Order and Cost of Filing fee

**I ordered the landlord(s) to pay to the tenant the sum of \$558.44 plus the sum of \$50 in respect of the filing fee for a total of \$608.44.** MGMM has the right to file a claim in civil courts for a determination as to whether the tenant in his capacity as an employee owes his employer any money for reimbursement of the housing advance.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

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: May 29, 2013

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Residential Tenancy Branch

