



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      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 unpaid utilities and unpaid rent 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.

I have reviewed all evidence and testimony before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

*Preliminary issue-* The evidence was discussed and the landlord denied receiving the tenants' documentary evidence, which the tenants said was sent via registered mail. The tenants said that they had confirmation that the landlord received the registered mail, as shown by her signature recorded online. The landlord still denied receiving the documentary evidence of the tenants, despite my own search of the records confirming the tenants' statement, saying that she has not lived at the address listed on her application since March 2013.

In response to my question, the landlord acknowledged that she is using the mail forwarding service of Canada Post.

I have accepted the tenants' documents into evidence, as the evidence shows that the landlord signed for the registered mail.

Issue(s) to be Decided

Is the landlord entitled to a monetary award and to recover the filing fee?

Background and Evidence

The undisputed evidence shows that this tenancy began on September 1, 2012, ended on December 30, 2012, monthly rent was \$2200, and the tenants paid a security deposit of \$1100 and a pet damage deposit of \$1100 at the beginning of the tenancy.

The parties agreed that all but \$200 of the tenant's security deposit and pet damage deposit has been returned to the tenants.

The landlord's monetary claim is \$494.47, comprised of unpaid rent of \$200, \$126.88 for a BC Hydro bill, and \$107.43 for a Fortis BC gas bill.

The landlord's relevant documentary evidence included a copy of a Fortis bill, a copy of a BC Hydro bill, and copies of text messages between the parties.

In support of her application, although she did not supply a copy of the tenancy agreement, the landlord stated that the parties had an agreement that the utility bills would be shared, with the tenants paying 75% and the landlord paying 25%. The landlord stated that during the tenancy she received the bills and would then leave them with the tenants for reimbursement.

As such the landlord said that there was a remaining balance of unpaid utilities through the end of the tenancy as listed above. The landlord said that the total amount was unknown on the last day of the tenancy and that she called the utility companies sometime after the tenancy ended, finding out the total unpaid utilities remaining, which was listed in her application.

As to her request for \$200, the landlord said that the tenants were short in their monthly rent for October, as the parties had an agreement that the tenant would perform certain work around the rental unit with a deduction of \$200 from the monthly rent. The landlord contended that the work was not performed.

In response to the landlord's submissions, the tenants said that a final walk-through of the rental unit was performed with the landlord's mother, as the landlord was out of town during this time. It was during this walk-through that the parties agreed that the landlord

could retain \$200 from the tenants' security deposit in satisfaction of all unpaid utilities remaining as the total was unknown to the parties at that time and an average of \$200 had been agreed upon. The landlord did deduct the \$200 before returning the balance.

The tenant pointed out that the Fortis bill, which was not submitted until March 2013, had a previous balance of \$70 listed, which meant that the landlord had not paid the previous bill before applying for recovery of the current bill.

As to the landlord's request for \$200, the tenants submitted that this amount was deducted from the first month's rent, not October, at the landlord's suggestion, as her previous tenants did not vacate the rental unit in time for the tenants to move in on September 1. The tenants pointed to their documentary evidence, which were text messages between the parties showing the written conversation regarding this agreement.

Additionally, the tenants stated that at the end of the tenancy during the walk-through, the landlord's agent said that all the work performed was good.

In response, the landlord admitted that she did retain the \$200 and forgot to credit the tenants this amount before applying for dispute resolution. The landlord agreed that the figure of \$200 was agreed upon due to this amount being the average of the utility bills.

### Analysis

In a claim for damage or loss under the Act, which falls in sections 7 and 67, 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 claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

As to the landlord's request for unpaid utilities, I find that the landlord's agent and the tenants entered into an agreement that the landlord would retain \$200 in satisfaction of all remaining utilities for this tenancy based upon the average utility cost as stated by the landlord. I also find it likely that both parties were aware that this agreement could end up either favouring the landlord or the tenants; however the parties nonetheless made this agreement.

I therefore dismiss the landlord's monetary claim for \$126.88 for a BC Hydro bill and \$107.43 for a Fortis BC gas bill.

As to the landlord's request for unpaid rent, I find the tenants' documentary evidence clearly shows that the landlord agreed to a deduction of \$200 for September as the rental unit was not made available for September 1, 2012. I therefore find the landlord has not demonstrated that she is entitled to unpaid rent of \$200 and I dismiss her claim for \$200.

As I have dismissed the landlord's monetary claim, I decline to award her recovery of the filing fee.

### Conclusion

The landlord submitted insufficient evidence to support her application and her 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* and is being mailed to both the applicant and the respondent.

Dated: June 13, 2013

---

Residential Tenancy Branch