



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## Decision

Dispute Codes      CNR, CNC, MND, MNR, MNSD, MNDC, OPR, FF

## Introduction

This is an application by the tenant seeking a monetary order for the return of the security deposit, compensation for utilities and a rent abatement for depriving the tenant of heat and hydro.

The landlord is seeking rental arrears.

Both parties attended. At the start of the hearing, I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

## Issues(s) to be Decided

- Is the tenant entitled to monetary compensation?
- Is the landlord entitled to monetary compensation for rental arrears?

## Background and Evidence

The tenancy began in August 2011 and ended on March 16, 2013. The rent was \$1,200.00 per month and a security deposit of \$600.00 was paid.

No copy of the tenancy agreement was in evidence. However, the parties testified that the utilities were in the tenant's name and the tenant was to collect the landlord's share of 1/3 of the total bill from the landlord. The tenant testified that this smaller proportion of the utilities for the landlord was agreed-upon by the tenant, because the landlord was only supposed to occupy the other suite intermittently.

The tenant testified that, when the landlord began to spend more time in the other suite and also proceeded to rent part of her half of the building to a third party, the tenant then requested that the landlord pay for half of the utilities.

The tenant testified that the landlord refused to pay any of the utility bills and the tenant is now seeking \$457.99 owed for the landlord's consumption of the utilities.

The tenant testified that they did not pay their rent for March 2013, because the landlord was not available for them to pay her. The tenant testified that they then received a Ten Day Notice to End Tenancy for Unpaid Rent. The tenant testified that they did not dispute the Notice and planned on moving, due to the landlord's persistent refusal to reimburse them for the landlord's portion of the utilities.

The tenant testified that the landlord suddenly turned off their power on March 5, 2013 and they were forced to heat the home with firewood. The tenant is claiming damages of \$100.00.

The tenants are also seeking the return of their \$600.00 security deposit.

The landlord stated that she had never agreed to pay more than 1/3 share of the utilities.

The landlord denied disconnecting the tenant's utilities and stated that the power was cut off by the utility company because the tenant closed the account and took it out of their name, not because the landlord had interfered with the power.

The landlord does not agree that the tenant should be granted \$100.00 in compensation for the loss of power as of March 5, 2013.

The landlord pointed out that the tenant did not pay any rent at all for the month of March 2013 and the landlord is claiming \$600.00 for rent owed for the month of March 2013. The landlord testified that the tenants did not vacate until March 16, 2013.

**Analysis: Monetary Compensation- Landlord**

The landlord is claiming \$600.00 for rent owed and I find that section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement. Through testimony from both parties it has been established that the tenant did not pay the rent when it was due.

I find that the landlord is entitled to \$600.00 rent for the period from March 1 to March 16, 2013, during which the tenant was in possession of the rental unit.

**Analysis: Monetary Compensation – Tenant**

The tenant is claiming payment of utilities owed to them by the landlord under a term of the tenancy agreement.

I find it important to note that in a claim for damage or loss under the Act, the party making the claim bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement,
3. Verification of the amount to compensate for the claimed loss, and
4. Proof that the claimant followed section 7(2) of the Act by taking reasonable steps to mitigate or minimize the loss or damage.

I find that I must first determine whether or not the landlord violated the Act or agreement.

Section 6(3) of the Act states that a term of a tenancy agreement is not enforceable if a) the term is not consistent with the Act or Regulations, b) the term is unconscionable, or c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.

With respect to the cost of utilities, I find that the term in the tenancy agreement that required the tenant to have the shared utility account in their own name and be responsible for collecting payments from another occupant in the building would contravene the Act.

Section 6(3)(a) of the Act, excerpted above. Moreover, if any term in an agreement results in the tenant having to pay for utilities used by others, I find that this would be an unconscionable term under section 6(3)(b).

I find that the landlord should have placed the utility account in the landlord's name and include a term in the tenancy agreement requiring the tenant to pay the landlord a portion of each utility invoice within 30 days of presentation of the bill.

In this situation, I find that the tenant held the account for the utilities and the landlord failed to reimburse the tenant, placing them in a position where they defaulted on rent for March 2013.

I accept the tenant's testimony that the landlord and another renter occupied one half of the area in the building and therefore the landlord must reimburse the tenant for 50% of the utilities. Accordingly, I find that the tenant is entitled to their claim of \$457.99.

With respect to the tenant's claim for compensation for the disconnection of their hydro, I accept the tenant's testimony that they were suddenly deprived of electricity including their heat and that they incurred costs and inconvenience because of this. I therefore find that the tenant is entitled to be paid \$100.00 by the landlord.

Based on the evidence before me, I find that the landlord is entitled to total monetary compensation of \$600.00 for rent owed for half of March, 2013.

Based on the evidence before me I find that the tenant is entitled to total monetary compensation of \$1,207.99, comprised of \$600.00 for the refund of the security deposit, \$457.99 for hydro reimbursement, \$100.00 for the hydro cut-off and the \$50.00 cost of the application.

In setting off the two monetary amounts granted to the landlord and tenant, I find that, after subtracting the \$600.00 awarded to the landlord, the tenant is entitled to the remainder of \$607.99.

I hereby grant a monetary order in favour of the tenant in the amount of \$607.99. This order must be served on the landlord and may be enforced through Small Claims Court if not paid.

### Conclusion

Both parties are partially successful in the applications. The landlord and tenant are granted monetary compensation which has been set off against each other

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: June 18, 2013

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Residential Tenancy Branch