



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **CORRECTED Decision**

### **Dispute Codes:**

MND, MNR, MNSD, MNDC, FF

### **Introduction**

This Dispute Resolution hearing was convened to deal with an application by the landlord for a monetary claim for utilities and reimbursement of the \$50.00 filing fee.

The hearing was also convened to deal with an application by the tenant for the return of double the security deposit under the Act in addition to the \$50.00 fee paid by the tenant for this application.

Both parties were present at the hearing. 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 to be Decided**

Is the landlord entitled to be compensated for damages and to retain the security deposit in partial satisfaction of the claim?

Is the tenant entitled to receive double the security deposit?

### **Background and Evidence**

The tenancy began in October 2012. Rent was \$1,100.00 not including utilities. The tenant was to pay 40% of utilities. A security deposit of \$550.00 and pet damage deposit of \$550.00 were paid.

The landlord testified that, when the tenant vacated, she left \$703.80 still owing for utilities and the landlord is claiming this amount in damages.

The tenant argued that, at the time the tenant agreed to rent the unit, the landlord made assurances about the average monthly cost of utilities and the tenant did not expect to be paying the large bills that were later presented. The tenant feels entitled to be charged an amount reflecting the quoted monthly rate for utilities.

The tenant pointed out that the landlord's a trailer, stored on the property, was kept plugged into the electrical system and the tenant felt that this added some hydro expenses to their total bill.

The landlord testified that the monthly charges quoted to the tenant were based on an average over the four seasons. However, the tenant resided in the rental unit during winter months when the costs were at their peak. The landlord testified that the tenant is responsible for 40% of the *actual* costs and the landlord feels entitled to this amount

The landlord testified that \$396.19 of the tenant's security deposit was already refunded to the tenant, but \$703.80 was retained for the utilities owed..

With respect to the trailer, the landlord pointed out that very little power was used by this vehicle and costs would be negligible. The landlord pointed out that the hydro used by the trailer was also taken into account in setting the original rental rate for the tenants.

The tenant testified that , in addition to disputing the amount being charged for utilities, she is also claiming a refund of double the security and pet damage deposits as the landlord failed to refund the deposits within 15 days, and didn't make an application to retain any portion of the deposits, within the 15-day deadline under the Act.

The landlord argued that the refund was delayed by the tenant's refusal to cooperate. According to the landlord, numerous attempts were made to amicably discuss the outstanding utilities but the tenant was not willing to deal with the debt and this delayed the landlord's application.

### **Analysis: Landlord's Monetary Claim**

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss 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 actual amount required to compensate for the claimed loss or to rectify the damage, and
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance, the burden of proof is on the landlord, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the respondent.

Section 58 of the Act provides that, except as restricted under this Act, a person may make an application for dispute resolution in relation to a dispute with the person's landlord or tenant in respect of any of the following:

- (a) rights, obligations and prohibitions under this Act;
- (b) rights and obligations under the terms of a tenancy agreement that
  - (i) are required or prohibited under this Act, or
  - (ii) relate to the tenant's use, occupation or maintenance of the rental unit, or the use of common areas or services or facilities.

Section 6 of the Act also states that the rights, obligations and prohibitions are enforceable between a landlord and tenant under a tenancy agreement and either party has the right to make an application for dispute resolution if they cannot resolve a dispute over the terms of their tenancy agreement. (My emphasis)

Given the above, I find that, I am authorized under the legislation to make determinations and orders to enforce both the Act and a tenancy agreement. I find that and both of these are involved in the dispute before me on this application.

I find that the tenancy agreement between the landlord and tenant provides that the tenant must pay 40% of the genuine hydro costs. Regardless of what other verbal discussions took place, I find that the terms in the written tenancy term must be enforced.

In addition to the above, I find that section 46, (6) of the Act states that ,if a tenancy agreement requires the tenant to pay utility charges to the landlord, and the utility charges are unpaid more than 30 days, after the tenant has been given a written demand for payment of them, the landlord may treat the unpaid utility charges as unpaid rent.

In regard to the landlord's claim for hydro costs, based the evidence, I accept the landlord's testimony that the tenant willingly agreed to pay a 40% share of the hydro under the tenancy agreement and that the final amount was let unpaid by the tenant.

However, I find that the landlord's trailer was utilizing some of the hydro and therefore, it would be unconscionable for the tenant to be forced to pay the landlord's portion. Accordingly I find that the cost of the landlord's hydro should be set at \$20.00 per month. I find that the tenant is entitled to be credited with 40% of the total cost of the landlord's use for the trailer over the 5-month tenancy for a total reduction for the tenant of \$40.00.

Accordingly, I find that the landlord is entitled to collect hydro costs of \$663.80 in payment for the tenant's portion of the hydro.

### **Analysis: Tenant's Monetary Claim**

In regard to the tenant's claim for double the security deposit, Section 38 of the Act deals with the rights and obligations of landlords and tenants in regard to the return of the security and pet damage deposits. Section 38(1) states that, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address the landlord must either repay the deposits, as provided under subsection 8, or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the landlord was in possession of the tenant's security deposit, held in trust on behalf of the tenant at the time that the tenancy ended. I find that because the tenancy was ended and the forwarding address was given to the landlord shortly thereafter, the landlord should either have returned the deposit, or made an application for dispute resolution within the following 15 days in compliance with the Act.

However, in this instance, the landlord retained the deposit failing to make an application until June 18, 2013, beyond the fifteen-day deadline under the Act.

Section 38(6) states: If a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security or pet damage deposit, and
- (b) must pay the tenant double the amount of the deposits

I find that section 38(6)(b) imposes a compulsory requirement that the landlord must pay double the amount of the deposit under these circumstances.

I find that the combined amount of the security and pet damage deposit was \$1,100.00. I find that, because the fifteen days had expired without the landlord meeting their responsibility under section 38(1) of the Act, the tenant would therefore be entitled to double this amount. This would be \$2,200.00 minus the \$396.19 already paid, leaving a credit for the tenant of \$1,803.81.

In setting off the \$663.80 owed to the landlord from the \$1,803.81 owed to the tenant, I find that the tenant is entitled to a monetary order in the amount of \$1,140.01.

Pursuant to section 38 of the Act, I hereby grant the tenant a monetary order for \$1,140.01. This order must be served on the landlord and is final and binding. If necessary it may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Each party is responsible for their own costs of the application.

### **Conclusion**

Both the landlord and the tenant are partially successful in their applications and are granted monetary compensation, the remainder of which is a monetary order in favour of the tenant.

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: September 09, 2013

**Corrected: November 25, 2013**

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Residential Tenancy Branch

