



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid utilities pursuant to section 67;
- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The tenant confirmed that she received a copy of the landlord's dispute resolution hearing package sent by the landlord by registered mail on August 20, 2013. The tenant also confirmed that she received a copy of the landlord's written and photographic evidence from the landlord. I am satisfied that the landlord served the above documents to the tenant in accordance with the *Act*.

### Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid utilities? Is the landlord entitled to a monetary award for damage and losses arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

This periodic tenancy for a basement rental unit in a two unit rental property commenced on August 1, 2010. According to the written Residential Tenancy Agreement entered into evidence by the landlord, the monthly rent for this tenancy was

set at \$675.00, payable in advance on the last day of each month. The tenant was also responsible for 40% of the utility bills for this two-unit rental property. The parties agreed that utilities were paid by the upstairs tenant who then was to obtain 40% of his costs directly from the basement tenant. The parties agreed that the landlord continues to hold the tenant's \$337.50 security deposit paid on July 30, 2010.

The tenant confirmed that the landlord handed her a 10 Day Notice to End Tenancy for Unpaid Utilities (the 10 Day Notice) on March 11, 2013. This 10 Day Notice identified \$418.00 in unpaid utilities owing as of March 10, 2013.

The tenant testified that on May 30, 2013, she handed the landlord a written notice to end her tenancy by June 30, 2013. Although she did not enter any written evidence or call any witnesses, she testified that her father witnessed her hand this written notice to the landlord on May 30, 2013. The landlord said that the tenant notified him of the tenant's intention to end her tenancy, but that she did not provide him with any written notice to end her tenancy.

The landlord initially testified that the tenant moved out of the rental unit at the end of July 2013. When the tenant disputed this testimony, stating that she was scheduled to vacate the rental unit on June 30, 2013 and actually vacated a few days later on July 3, 2013, the landlord changed his sworn testimony, saying that he must have been mistaken as to the month when the tenant was planning to leave the rental unit. At this point in the hearing, the landlord confirmed that the tenant ended a few days into July 2013. Later in the hearing, the landlord changed his testimony again, claiming that the tenancy ended on August 2 or 3, 2013, when he changed the locks to the rental unit.

The landlord entered into written evidence a copy of the July 31, 2010 joint move-in condition inspection report and a move-out condition inspection report he completed without the tenant's participation. The landlord identified June 30, 2013 as the scheduled end date for this tenancy on his move-out condition inspection report. However, the landlord's photographic evidence of the condition of the rental unit at the end of this tenancy was dated July 31, 2013. The landlord testified that he took these photos on July 31, 2013.

The tenant gave undisputed sworn testimony that she attended the rental unit at a pre-arranged time to conduct a joint move-out condition inspection of the rental unit with the landlord. When neither the landlord nor his representative attended at the time and date agreed to by the parties, the tenant left the rental unit. The landlord said that he or his wife were delayed and did not attend the scheduled move-out condition inspection until five minutes after the scheduled time. The tenant said that she did not anticipate a

problem at that point because she had paid her full rent for July 2013, and was expecting to have access for that month to enable her to conduct a proper cleaning of the rental unit. She said that she was surprised when the landlord changed the locks on July 3 or 4, 2013, even though the landlord had accepted her rent for July 2013.

The only specific portion of the landlord's application for a monetary award of \$1,800.00 was a \$431.00 claim for unpaid utilities covering the period from May 7, 2013 until July 3, 2013. The landlord submitted written evidence from the upstairs tenant who had the account with the utility company. This evidence included an August 1, 2013 statement from the upstairs tenant in which he maintained that \$410.00 remained owing for the period until June 22, 2013, and a further 8 days was also owing for the period from "June 23 to June 30, 2013." The landlord's increased claim for utilities added the first 3 days of July 2013 to this request. The landlord testified that he allowed the upstairs tenant to reduce his rent by \$431.00 to compensate the upstairs tenant for the tenant's unpaid utilities. The landlord did not provide any receipts or records to confirm that he had absorbed this loss, allegedly incurred by the upstairs tenant.

The tenant testified that she paid the upstairs tenant cash for all of the utilities owed for her tenancy. She did not provide details on when these payments were made. She testified that the upstairs tenant refused to issue any receipts for her utility payments, despite her requests for receipts.

In the Details of the Dispute section of the landlord's application for a monetary award, the landlord identified the following items in his claim for \$1,800.00:

*...damage to unit, all photos of garbage left behind, keys not returned...*

The landlord did not produce any receipts to support his claim, other than the utility bills under the account of his upstairs tenant. At the hearing, the landlord testified that he was only interested in receiving compensation for the unpaid utility bill (i.e., \$431.00) and authorization to retain the tenant's security deposit as a means of covering his costs of cleaning up the rental unit after this tenancy ended. He did not dispute the tenant's claim that he changed the locks on the rental unit or that the tenant paid him for a full month's rent for July 2013.

In the latter stages of this hearing, the landlord changed his testimony, alleging that the tenant did not move out of the rental unit until late July 2013. He testified that he changed the locks to the rental unit on August 2 or 3, 2013. By contrast, the tenant testified that the last day that she had any access to the rental unit was July 3 or 4, 2013. She testified that she could not conduct a proper cleaning of the rental unit and

remove material left behind at the end of her tenancy because the landlord changed the locks to the rental unit on July 3 or 4, 2013.

The tenant also testified that the landlord's photographs do not accurately reflect the condition of the rental unit at the time the landlord changed the locks. She maintained that unknown individuals gained access to the rental unit 2 ½ to 3 weeks after she moved out and had a noisy drinking party. She claimed that the police were called to break up this party and that the landlord's photographs reflect the mess created by that party and not the true condition of the rental unit at the end of her tenancy. In this regard, she noted that the landlord's photographs entered into evidence by the landlord are dated July 31, 2013. The landlord testified that he took these photos accurately reflected the condition of the rental unit at the end of this tenancy.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must 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 other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

The only documented amounts that the landlord produced to support his claim were copies of utility invoices for the upstairs tenant's utility account. I am not satisfied that the landlord has demonstrated to the extent required that the landlord has actually suffered any losses with respect to the tenant's alleged unpaid utilities. The landlord provided few details regarding his claim that he has given the upstairs tenant a rent allowance for \$431.00 to cover the alleged unpaid utilities. He produced no written documentation from the upstairs tenant to demonstrate that the landlord and not the upstairs tenant has suffered this loss. In fact, as recently as August 1, 2013, and 13 days before the landlord launched his application to recover the unpaid utilities, the upstairs tenant sent the landlord a note stating that the upstairs tenant had not been paid utilities by the tenant since May 7, 2013. Under these circumstances, I find that the landlord has not demonstrated to the extent required that he has suffered any actual monetary losses as a result of the tenant's alleged failure to pay her portion of the utilities for this rental property to the utility account holder, in this case, the upstairs

tenant. I dismiss the landlord's application for a monetary award for unpaid utilities without leave to reapply.

The key issue with respect to the remainder of the landlord's claim rests with whether the landlord took action in early July 2013 or early August 2013 to change the locks to the rental unit, and thus prevent the tenant from cleaning the rental unit at the end of her tenancy. Without an Order of Possession, the *Act* does not allow a landlord to take possession of a rental unit and change locks, unless the premises have been abandoned by a tenant. Even though the tenant had planned to end her tenancy by June 30, 2013 and did not do so, there is undisputed sworn testimony that the landlord accepted the tenant's full rental payment for all of July 2013. The landlord had no Order of Possession when he changed the locks to the rental unit and I am not satisfied that the landlord has demonstrated that the tenant abandoned the rental unit.

The landlord's photographic evidence clearly indicated that by July 31, 2013, this rental unit was not in the same condition as was noted in the joint move-in condition inspection. While the tenant confirmed that she did not conduct a proper cleaning of the rental unit at the end of her tenancy, she also explained why she could not do so as a result of the landlord's premature and unauthorized changing of the locks on her rental unit before she gave up vacant possession of her rental unit.

As noted above, the parties gave essentially similar accounts of what transpired at the end of this tenancy. The significant difference in their sworn testimony was that the tenant testified that these events occurred at the end of June 2013 and the first few days of July 2013, while the landlord testified late in the hearing that these events actually occurred a month later.

In this regard, I prefer the consistent evidence given by the tenant to the multiple changes in sworn testimony in this regard presented by the landlord. The landlord initially testified that the tenant gave her notice to end this tenancy at the end of July. When confronted with the tenant's claim that she planned to end her tenancy at the end of June, the landlord changed his mind, admitting his mistake. Later in the hearing and confronted as he was with the tenant's evidence that he accepted her July 2013 rent payment in full and changed the locks in early July, the landlord switched his sworn testimony yet again, claiming that he did not take possession and change the locks until August 2 or 3, 2013. These changes in the landlord's sworn testimony call into serious question the accuracy of the dates cited by the landlord.

I also find that the landlord's own evidence is at odds with the landlord's revised testimony that he did not change the locks until August 2 or 3, 2013. For example, the

landlord identified June 30, 2013 as the move-out date in his move-out condition inspection report. I do not accept his testimony that he erred in selecting this date as this testimony differed from his own written evidence. I also find that the landlord submitted at least three pieces of written evidence with respect to the dates when utility bills were not paid. Each of these documents, some of which were created by the upstairs tenant, clearly cited that the period of unpaid utilities covered the period ending on June 30, 2013 or July 3, 2013. In fact, one of these documents prepared by the upstairs tenant was dated August 1, 2013, two days **before** the landlord claimed to have taken possession of the tenant's basement rental unit. In that document, the upstairs tenant noted "I haven't seen her (the tenant) since end of June and have no contact or her new address."

For all of the above reasons and on a balance of probabilities, I find that the events in question occurred at the end of June 2013 leading to the landlord's unauthorized changing of locks to the rental unit on or about July 3, 2013. Having accepted the tenant's rental payment for all of July 2013, I find that the landlord had no legal authority to change the locks and thus deny the tenant an opportunity to conduct a proper cleaning of the rental unit before the tenant surrendered vacant possession to the landlord. Had he not taken this action in contravention of the Act, the tenant would have had an opportunity to clean the premises and remove materials that she acquired during the course of this tenancy. I also find that the landlord's photographs taken on July 31, 2013 do not necessarily accurately reflect the condition of the rental unit almost a month earlier when the tenant last had possession of this rental unit. I find that the landlord's own actions in prematurely taking possession of the rental unit prevented the tenant from leaving the rental unit in a condition similar to that which was identified in the joint move-in condition inspection report. For these reasons, I dismiss the landlord's application for a monetary award for damage and losses arising out of this tenancy without leave to reapply.

As the landlord's application has been unsuccessful, he bears the costs of his filing fee. I also dismiss the landlord's application to retain the tenant's security deposit and order the landlord to return the tenant's security deposit, plus applicable interest, forthwith. No interest is payable over this period.

### Conclusion

I dismiss the landlord's application without leave to reapply.

I issue a monetary Order in the amount of \$337.50 in the tenant's favour, the amount of the tenant's security deposit currently retained by the landlord. The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as

soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: November 19, 2013

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Residential Tenancy Branch

