



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNR, MND, FF

Introduction

This hearing was convened in response to applications by the landlord and the tenant.

The landlord's application is seeking orders as follows:

1. For a monetary order for unpaid utilities;
2. For a monetary order for damages to the unit;
3. To keep all or part of the security deposit; and
4. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. Return of double the security deposit; and
2. To recover the cost of filing the application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Preliminary issue

It is important to note that the landlord provided an amended monetary claim within their documentary evidence which was filed on December 27, 2013, increasing the monetary claim. The landlord did not amend their Application in accordance with the Residential Tenancy Branch Rules of Procedure, Rule 2.5.

Therefore, in this decision I have considered the landlord's monetary claim as it was filed in their Application of October 11, 2013.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid utilities?

Is the landlord entitled to a monetary order for damages to the unit?

Is the landlord entitled to keep all or part of the security deposit?

Is the tenant entitled to double the security deposit?

Background and Evidence

The tenancy began on July 6, 2012. Rent in the amount of \$950.00 was payable on the first of each month. A security deposit of \$475.00 was paid by the tenant. The tenancy ended on September 30, 2013.

Landlord's application

The landlord claims as follows:

a.	Unpaid utilities hydro, gas, and water	
b.	Missing smoke alarm, repaint, cleaning costs	
	Total claimed	\$800.00

Unpaid utilities hydro, gas, and water

The landlord testified that the tenant failed to pay her portion of utilities under the terms of the tenancy agreement. The landlord stated that the tenant failed to pay two invoices that were receive for gas and water prior to the tenancy ending and failed to pay for the gas, hydro and water invoices that were received after the tenancy ended. Filed in evidence are copies of utility invoices.

The tenant acknowledged that they owe utilities for any invoices that were received after their tenancy ended. The tenant agreed to \$70.70 for Hydro, and \$43.81 for gas.

The tenant testified the water invoice indicated that the meter was read on November 28, 2013, and that they should not be responsible to pay the full amount of \$181.50 as their tenancy ended on September 30, 2013. The tenant agreed to pay the amount of \$121.00 as their portion.

The tenant testified that on September 19, 2013, the landlord attended the rental unit to collect money for the utilities and she paid the gas and water invoices in cash with her "tip money". The tenant stated that she asked the landlord to bring her a receipt and leave it with her daughter as she was leaving for work. However, no receipt was provided.

The witness (CS) for the tenant testified that she was at home on September 19, 2013, when the landlord came to the rental unit asking to be paid for the utilities. (CD) stated she saw the tenant pay the landlord in cash, however, is not sure of the exact amount.

The witness (BK) for the tenant testified that he was at home on September 19, 2013, when he saw the tenant pay the landlord cash for the utilities. (BK) stated he heard the tenant ask the landlord for a receipt.

The landlord argued that on September 19, 2013, she only brought the tenant copies of invoices. The landlord stated she has always provided a receipt to the tenant in the past and did not on this occasion as the utilities were not paid.

Missing smoke alarm, repaint, cleaning costs

The landlord's testified that at the end of the tenancy there was a missing smoke alarm, a missing curtain and that there was also damage to the walls which required repainting.

The tenant testified that they are not responsible for the smoke alarm or the curtain as these were not provided at the start of the tenancy. The tenant denied causing any damage to the walls and stated the damage was there at the start of the tenancy.

Tenant's application

The tenant claims as follows:

a.	Double the security deposit	\$950.00
	Total claimed	\$950.00

The tenant testified that she moved out of the rental unit on September 30, 2013, and she provided the landlord with her forwarding address at the time.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the each party has the burden of proof to prove their respective claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Landlord's application

Unpaid utilities hydro, gas, and water

In this case, both parties have provided a different version of event regarding the payment of utilities on September 19, 2013. However, the tenant has provided two witnesses to support her version of events, which was that she paid the two outstanding utility invoices in cash to the landlord and the landlord failed to bring her a receipt.

I find without further evidence from the landlord, such as witness, that the landlord has provided insufficient evidence to support this portion of the claim. However, the tenant acknowledged that the invoices that were received after the tenancy had ended were not paid. Therefore, I find the landlord is entitled to recover unpaid utilities in the amount of **\$235.51**.

Missing smoke alarm, repaint, cleaning costs

In this case, a move-in and move-out condition inspection report was not completed by the parties as required by the Act. The evidence of the tenant was there was no smoke alarm or curtain provided by the landlord and that the damage to the wall was there at the start of the tenancy.

I find the landlord has provided insufficient evidence to support that these items existed or that the damage was caused by the tenant, as the landlord has not provided a move-in condition inspection report, or any photographs of the rental unit at the start of the tenancy. Therefore, I dismiss this portion of the landlord's claim.

I find that the landlord has established a total monetary claim of **\$285.51** comprised of the above described amounts and the \$50.00 fee paid for this application.

Tenant's application

The tenant seeks to recover double the security deposit that they paid to the landlord. However, section 38(6) of the Act, only applies when the landlord fails to comply with section 38(1) of the Act, which is to make an application for dispute resolution within 15

days of the tenancy ending, or receiving the tenant's forwarding address whichever is later.

In this case, the tenancy ended on September 30, 2013, and the landlord's application for dispute resolution was filed on October 11, 2013. I find the landlord complied with section 38 of the Act. I find the tenant has failed to prove the landlord violated the Act. Therefore, I find the tenant is not entitled to double of the security deposit.

As the tenant's application for double the security was without merit, I find the tenant is not entitled to recover the cost of the filing fee from the landlord.

Conclusion

As I have found the landlord had established a total money claim of **\$285.51**, I order that the landlord retain that amount from the security deposit (\$475.00) in full satisfaction of the claim and I grant the tenant an order under section 67 for the balance due of their security deposit in the amount of **\$189.49**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The tenant's application for double the security deposit is dismissed.

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: January 23, 2014

Residential Tenancy Branch

