



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNSD, FF

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution made by the landlord for a Monetary Order for: unpaid rent or utilities; to keep all or part of the pet damage or security deposit and to recover the filing fee from the tenant for the cost of this application.

The landlord and tenant appeared for the hearing. The landlord provided the Canada Post tracking number as proof of service of the Notice of Hearing documents. The tenant confirmed receipt of the documents and based on this, I find that the landlord served the hearing documents to the tenant as required by the Residential Tenancy Act (referred to as the "Act").

The landlord rented a three bedroom house from the owner of the home. The landlord then sublet one of the bedrooms to the tenant and it is for this tenancy that this hearing was scheduled for.

Both parties provided affirmed testimony during the hearing which has been carefully considered in this decision. No evidence was provided in advance of the hearing by either party despite both parties being aware of their obligations to serve evidence in accordance with the Residential Tenancy Regulations, which is also documented in the information fact sheet provided to both parties during the application process.

### Issue(s) to be Decided

- Is the landlord entitled to monetary compensation relating to unpaid cable and internet charges?
- Is the landlord entitled to keep all or part of the security deposit in partial satisfaction of the claim?

### Background and Evidence

Both parties agreed that the tenancy started in May, 2012 on a month to month basis. No written tenancy agreement was completed but the parties agreed that the tenant had paid \$125.00 security deposit in May, 2012 which the landlord still retains. The tenancy was ended by the landlord, who left the rental unit in October, 2013. After this point, the tenant then engaged into a new tenancy agreement with the owner of the home to continue renting the room.

The landlord testified that she sublet one of the rooms in the three bedroom property to the tenant in the amount of \$800.00 payable on the first of every month. The landlord testified that she had a verbal agreement with the tenant that the tenant would pay half of the cable and internet after she produced the utility bill to the tenant by posting it to the door of the refrigerator in the communal area.

The landlord testified that after about a year, she sublet the second bedroom to another renter, at which point it was verbally agreed that the cable and internet bills would be split three ways as opposed to two ways. As a result of a second renter coming into the suite, the rent payable by the tenant was also reduced, due to the new renter, to \$500.00 per month.

The landlord testified that the tenant owed \$69.21, which is half the amount due for the winter period of 2012 as there was only two of them residing in the unit at the time. The landlord testified that the tenant also failed to pay for June – October, 2013 cable and internet charges in the amount of \$156.61, calculated by splitting the bill three ways as at this time there were three people residing in the house. As a result, the landlord claims \$225.00 from the tenant for the charges she incurred.

The tenant testified that he only paid \$800.00 monthly rent only for the first two months of the tenancy, after which point, this was reduced to \$500.00 to reflect the fact that there were three people residing in the home. As a result, the tenant testified that he was only responsible for a third of the cable and internet bill for the 2013 winter period and not half, as claimed by the landlord. The tenant testified that he paid the outstanding amount for the winter period of 2012 to the second renter, according to an arrangement made between all of the parties residing in the home.

The tenant testified that after June, 2013, the landlord made a change to the services by reducing the television channels which he did not watch and eliminating the internet service. The tenant testified that he used the wireless internet of the basement tenants in the same house for the remainder of the tenancy and did not have any access to the

services, although he admitted to having the ability to watch the reduced channels on the communal television.

The landlord testified that there was a change to the number of television channels but the tenant did not make any mention of this or make mention of the fact that he did not have any internet access during the tenancy.

### Analysis

When an applicant makes a monetary claim for unpaid utilities, the applicant is responsible for meeting a burden of proof, on the balance of probabilities to prove the claim, especially in the case where it is one party's word against the other.

Section 13 of the Act requires a landlord to complete a written tenancy agreement with a tenant. However, if a landlord and tenant fail to complete a written tenancy agreement, a tenancy still can be established. In this case, I find that the tenant paid a security deposit and a rent amount was established at the start of the tenancy, even though this fluctuated based on the number of renters in the house, and thus a tenancy was established

The landlord and tenant disagreed on the amounts of the utilities that were owed and the tenant denied that any of the utilities were outstanding and stated that the utilities for winter 2013 had been paid to the second renter. The landlord failed to complete a tenancy agreement or clearly document the agreement with regards the payment of the internet and cable bill. The landlord also failed to provide sufficient evidence in the form of: utility bills; utility demand letters; documentation detailing who utilities were payable to and how they would be calculated; and, rent receipts to show the amount that was paid by the tenant in order to determine the amount of renters in the house.

The landlord stated that she had the utility bills but failed to provide them prior to the hearing stating that she did not understand that she had to do this. However, the landlord would still have had to prove that the tenant was responsible for a portion of the utility bills and that these were unpaid by the tenant. The landlord claimed to have a 'gentleman's agreement' that the tenant would pay the outstanding utility amounts. However, I find that I am unable to award the landlord these costs based on a verbal agreement, the terms of which are now in question and contested by the tenant.

As the landlord has failed to meet the burden of proof in this case, I dismiss the landlord's application in its entirety and the landlord must return the tenant's security deposit forthwith.

Conclusion

For the reasons set out above, I dismiss the landlord's application without leave to re-apply.

The tenant is issued with a Monetary Order in the amount of \$125.00 which is enforceable if the landlord fails to return this amount to the tenant. This Order may then be served on the landlord and filed in the Provincial Court (Small Claims) and enforced as an order 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: January 15, 2014

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Residential Tenancy Branch

