



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND MNR MNSD MNDC FF O

### Introduction

This hearing dealt with monetary applications by the tenant and the landlord. Both the tenant and the landlord participated in the teleconference hearing.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. Both parties were given full opportunity to give testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

### Issue(s) to be Decided

Is the tenant entitled to monetary compensation as claimed?

Is the landlord to monetary compensation as claimed?

### Background and Evidence

The tenancy began on June 15, 2013. The rental unit was a basement suite in a house, where the upstairs was occupied by other tenants. At the outset of the tenancy the tenant paid the landlord a security deposit of \$275. The landlord did not carry out a move-in inspection with the tenant or complete a condition inspection report.

The tenant did not pay rent for October 2013. On October 3, 2013 the tenant gave the landlord written notice that she would be vacating the rental unit on or before October 13, 2013, and gave the landlord her forwarding address in writing. The tenancy ended in early October 2013. The landlord did not return the security deposit and did not apply to keep the deposit until February 24, 2014.

### *Tenant's Evidence*

The tenant stated that at the beginning of the tenancy the landlord told the tenant that she would have to put the hydro for the entire house in her name, and the tenants upstairs were responsible for the gas bill. The tenant and the upstairs tenant shared the laundry facilities, and the heat for the entire house was controlled by the tenants upstairs. The tenant stated that after discussing this arrangement with the landlord, he agreed to reduce the tenant's rent to \$500 per month from October 1 through April 1.

The tenant stated that when the basement started getting damp and cold, she called the people upstairs and asked them to turn the heat on. They screamed at her, so she never asked them again. The tenant started to use an electric heater, which caused her hydro bills to go up. The tenant stated that she called the landlord on September 27, 2013 and told the landlord that he could either ask the tenants upstairs to provide heat or he could provide her unit with heat. The landlord refused to do so. The tenant stated that the landlord called her back ten minutes later and told the tenant that he had decided to close the basement for the winter, and the tenant had to leave. The tenant stated that on October 3, 2013 the landlord gave the tenant a notice to end tenancy for unpaid rent. The tenant stated she cleaned the unit and it was totally empty when she vacated.

The tenant claimed double recovery of her security deposit and \$119, the amount of the tenant's hydro bills from August 10 to October 10, 2013, for loss of quiet enjoyment because the landlord would not provide heat.

### *Landlord's Evidence*

The landlord stated that the tenant was well aware of the trade-off with heat and laundry at the beginning of the tenancy, and the landlord agreed to reduce the rent to \$500 per month for the winter months in the event that the tenant needed an electric heater during those months.

The landlord stated that at the end of September 2013 the tenant called to complain about the cold. The landlord stated that he spoke to the tenant on October 2, 2013 about October's unpaid rent, and he told the tenant that he would bring her two electric heaters. The tenant called him back five minutes later to say she had two heaters. The landlord stated that he called the tenant back and suggested to her that if she was so unhappy with the unit, perhaps she should be looking for somewhere else for November 1, but she would still have to pay rent for October.

On October 3, 2013 the landlord served the tenant with a notice to end tenancy for unpaid rent in the amount of \$550. The landlord stated that the tenant then immediately gave her notice to vacate on October 13, 2013. The landlord stated that when the tenant vacated the unit, it had not been cleaned at all. He stated that they spent one and a half days cleaning.

The landlord claimed \$500 rent for October 2013 rent, cleaning costs of \$275 and \$13 for dumping fees.

### Analysis

#### *Tenant's Claim*

In regard to the security deposit, I find as follows. Section 38 of the Residential Tenancy Act requires that 15 days after the later of the end of tenancy and the tenant providing the landlord with a written forwarding address, the landlord must repay the security deposit or make an application for dispute resolution. If the landlord fails to do so, then the tenant is entitled to recovery of double the base amount of the security deposit.

In this case, the tenant provided her forwarding address in writing on October 3, 2013, and the tenancy ended on October 13, 2013. The landlord failed to repay the security deposit or make an application for dispute resolution within 15 days of the tenancy ending. I therefore find that the tenant is entitled to double recovery of her security deposit, in the amount of \$550.

In regard to the tenant's claim for \$119 for loss of quiet enjoyment and lack of heat, I find that the tenant is entitled to this amount. A landlord may not require a tenant to pay utilities for another unit. I accept the tenant's evidence that she did not have adequate heat, and the landlord did not take appropriate steps to remedy the problem.

#### *Landlord's Claim*

I find that the landlord is entitled to rent of \$500 for October 2013. The tenant could have applied to dispute the notice to end tenancy, but instead she chose to move out. The tenant did not provide sufficient evidence to show that the landlord told the tenant to move out because he was closing the unit for the winter; the landlord would not have been able to evict the tenant in any case if he did not have cause under the Act.

I find that the landlord is not entitled to cleaning and dumping costs, as he did not provide sufficient evidence, such as photographs or detailed testimony about the work that was done.

Because the landlord's application was only partly successful, I find he is entitled to partial recovery of his filing fee, in the amount of \$25.

Conclusion

The tenant is entitled to \$669. The landlord is entitled to \$525.

I grant the tenant an order under section 67 for the balance due of \$144. This order may be filed in the Small Claims Court 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: April 24, 2014

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Residential Tenancy Branch

