



# 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 the landlord's application for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlord to keep all or part of the tenant's security deposit; and to recover the filing fee from the tenant for the cost of this application.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*; served by registered mail on January 21, 2014. Canada Post tracking numbers were provided by the landlord in documentary evidence. The landlord testifies that when this package was returned to the landlord the landlord resent the package by registered mail on March 04, 2014 a second time. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

### Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order to recover unpaid rent?
- Is the landlord permitted to keep all or part of the security deposit?

Background and Evidence

This month to month tenancy started on December 01, 2013 although the tenant was permitted to move into the unit on November 23, 2013 for a prorated rent of \$303.33. Rent for this unit was \$1,300.00 per month plus 45 percent of utilities. Rent was due on the 31<sup>st</sup> of each month. The tenant paid a security deposit of \$650.00 on November 06, 2013. The landlord has provided a copy of the tenancy agreement in documentary evidence. The tenant vacated the rental unit on January 16, 2014 after a 10 Day Notice to End Tenancy for unpaid rent was served upon the tenant on January 07, 2014. The tenant provided a forwarding address in writing on January 16, 2014.

The landlord testifies that the tenant failed to pay the prorated rent for November, 2013 of \$303.33. The tenant also failed to pay all the rent owed for December, 2013 after the tenants rent cheque was not honored at the bank due to insufficient funds (NSF). The tenant later paid three separate payments for December of \$500.00, \$130.00 and \$350.00. This left an unpaid balance of \$320.00. The tenant failed to pay any rent for January, 2014. The total amount of unpaid rent is \$1,923.33.

The landlord testifies that the tenant failed to pay any of the utilities. The landlord has provided copies of the utility bills for Hydro and Gas and these have also been sent to the tenant. The hydro bill was for a period between November 01 and December 13, 2013 for \$167.28. However as the tenant did not move into the unit until November 23, 2013 the landlord has prorated this hydro bill for the period the tenant did not reside in the unit and has calculated this bill on a 45 percent amount of \$38.51. The gas bill was for a period between November 22 and December 20, 2013 for \$140.73. The landlord has calculated this on a 45 percent amount of \$63.32.

The landlord testifies that as the tenants rent cheque was NSF for December the landlord seeks to recover bank fees of \$7.50. The landlord agrees that NSF fees have not been documented in the tenancy agreement.

The landlord seeks an Order to keep the security deposit of \$650.00 to offset against the landlords monetary claim. The landlord also seeks to recover the \$50.00 filing fee from the tenant for the cost of this proceeding.

### Analysis

The tenant did not appear at the hearing to dispute the landlords claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I have carefully considered the landlords documentary evidence and sworn testimony before me. Section 26 of the *Act* states:

*A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

I am satisfied with the evidence before me that the tenant owes rent for November, 2013 December, 2013 and January, 2014 of **\$1,923.33**. I therefore uphold the landlord's application to recover rent arrears.

I find the tenancy agreement does not include utilities. The landlord has testified that the tenant's share of utilities is 45 percent. As the tenant has not appeared at the hearing to dispute this claim I find the tenant owes utilities of **\$38.51** for Hydro and **\$63.32** for gas. The landlord has provided two other utility bills in evidence but did not mention these during the hearing and they have not been included on the landlord's monetary claim.

With regards to the landlords claim for an NSF fee of \$7.50. A landlord may charge a fee for NSF cheques where the tenancy agreement provides for that fee in accordance with s. 7(2) of the Residential Tenancy Regulations. I have reviewed the tenancy agreement provided in evidence by the landlord and find the tenancy agreement does provide for an NSF fee. Therefore has the tenant has not been notified that a fee of this

nature will be applied and consequently I find the landlord is not entitled to recover this NSF fee.

I find the landlord is entitled to recover the filing fee of **\$50.00** pursuant to s. 72(1) of the *Act*.

I Order the landlord, pursuant to s. 38(4)(b) of the *Act* to keep the tenant's security deposit of **\$650.00** in partial satisfaction of the landlords monetary claim. This amount has therefore been offset against the landlords Monetary Order as follows:

Unpaid rent	\$1,923.33
Unpaid utilities	\$101.83
Filing fee	\$50.00
Less security deposit	(-\$650.00)
Total amount due to the landlord	\$1,425.16

### Conclusion

I HEREBY FIND largely in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,425.16**. The Order must be served on the respondent. Should the respondent fail to comply with the Order, the Order may be enforced through the Provincial Court 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: May 06, 2014

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Residential Tenancy Branch

