



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND, MNR, MNSD, MNDC  
                              MNSD, MNDC, FF

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by both the Tenant and the Landlord.

The Landlord applied for a Monetary Order for unpaid rent, damage to the rental unit, to keep the Tenant's security deposit, and for money owed or compensation for loss under the *Residential Tenancy Act* (the "Act"). The Tenant applied for the return of her security deposit, for money owed or compensation for loss under the Act, and to recover the filing fee.

Both parties appeared for the hearing and provided affirmed testimony.

### Preliminary Issues

The Landlord's Application was amended, pursuant to Section 64(3) (c) of the Act for a request to recover the filing fee for making the Application, which was submitted on line.

The Landlord had submitted written evidence which has been provided to the Residential Tenancy Branch late as set out by the Rules of Procedure. As a result, this written evidence was not considered in the hearing. Apart from the tracking receipt for the service of the Notice of Hearing documents, the Tenant provided no other written evidence for this hearing.

At the start of the hearing, I confirmed that the Tenant had paid a \$750.00 security deposit to the Landlord. The Tenant testified that she had provided the Landlord with her forwarding address on March 30, 2014 which is the date she left the tenancy. I then determined that the Landlord had **not** made his Application to keep the Tenant's security deposit in accordance with the time limits stipulated by Section 38(1) of the Act.

Section 38(6) of the Act stipulates that if a Landlord fails to comply with Section 38(1) of the Act, the Landlord must pay double the amount back to the Tenant. As a result, the Landlord would have been liable to pay the Tenant **\$1,550.00** which is inclusive of the filing fee.

In relation to the Landlord's Application, the Landlord testified that the Tenant had sublet part of the rental suite without his consent and that when the Tenant vacated the rental suite on March 30, 2014, the sub-tenants were still present for the period of April, 2014 for which they paid no rent. The Landlord also submitted that the Tenant had not given notice to end the tenancy until March 15, 2014.

The Tenant disputed the Landlord's evidence stating that she had provided written notice to end the tenancy for the end of March 30, 2014 on February 28, 2014 to the Landlord's mother. The Tenant also testified that the sub-tenants had paid rent to the Landlord's mother for the month of April, 2014. However, the Tenant provided no supporting documentation to support this testimony. The Tenant submitted that she had a verbal agreement with the Landlord to sublet the rental suite.

The Landlord disputed that the Tenant was given permission to sublet part of the rental suite and submitted that the sub-tenants had not paid any rent and he was at loss for one month's rent in the amount of \$1,500.00 for April, 2014.

As a result of this testimony, I explained to the parties the following provisions of the Act.

Section 34 of the Act stipulates that a Tenant must not sublet a rental unit unless the Landlord consents to it in writing. Policy Guideline 19 to the Act also explains that it is the Tenant's responsibility to seek and secure the Landlord's written consent.

Section 45 of the Act explains that a Tenant must give the Landlord one full rental months of notice before ending a month to month tenancy. The notice must be in writing and the contents of the notice must comply with Section 52 of the Act. Policy Guideline 3 to the Act states that if a Tenant fails to give proper legal notice to the Landlord to end the tenancy, then the Landlord would be entitled to loss of rent up to the earliest time that the Tenant could have legally ended the tenancy.

Therefore, in the absence of any written evidence by the Tenant to support the fact that she had obtained the Landlord's written consent to sublet the rental suite or had provided proper legal notice to end the periodic tenancy, the Landlord disclosed a claim of **\$1,550.00** inclusive of the filing fee.

In relation to the Landlord's claim for damages, the Landlord submitted that he had not completed a move in and move out condition inspection report or provided any written evidence to verify the losses being claimed in the form of invoices or receipts. The Landlord acknowledged that even if I had considered the Landlord's written evidence, which consisted of a small amount of photographic evidence in relation to the damages, this would not have been sufficient for me to award a claim for damages.

As a result, the parties acknowledged that the respective amounts they would be entitled to would cancel each other out when they were offset against each other.

Therefore, this left the Landlord's claim for outstanding utilities in the amount of \$114.12. The Tenant acknowledged in the hearing and in her Application that these amounts were outstanding and payable to the Landlord.

Based on the above discussions, the Tenant and Landlord agreed to settle both Applications pursuant to Section 63 of the Act, with the Tenant paying the Landlord \$114.12 for the outstanding amount of utilities. The parties were asked to confirm whether this amount was agreeable to settle both Applications in full and final satisfaction which they did.

### Conclusion

The Tenant will pay to the Landlord **\$114.12** for the outstanding utilities on receipt of this decision. This amount is in **full and final** satisfaction of both Applications. The Landlord is issued with a Monetary Order in the amount of \$114.12 which is enforceable in the Small Claims court **if** the Tenant fails to make payment.

The Tenant is cautioned to ensure that documentation is retained in relation to the making of the payment in accordance with this agreement.

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: August 21, 2014

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Residential Tenancy Branch

