



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNDC, FF, MT, DRI, CNL

### Introduction

There are applications filed by both parties. The landlord has made an application for a monetary order for unpaid rent or utilities, for money owed or compensation for damage or loss and recovery of the filing fee. The tenant has made an application to be allowed more time to make an application to cancel a notice to end tenancy and if allowed to cancel a notice to end tenancy issued for landlord's use, to disputes an additional rent increase, a monetary order for money owed or compensation for damage or loss (recovery of overpaid rent) and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended and have confirmed receipt of the notice of hearing package and the documentary evidence submitted by the other party, I am satisfied that both parties have been properly served.

At the beginning of the hearing it was clarified with both parties that the tenancy has already ended and that the tenant's request for more time to make an application to cancel a notice to end tenancy and if successful the tenant's request to cancel a notice to end tenancy issued for landlord's use requires no further action. It was also clarified as well that that the tenant wished to amend their application to increase their monetary claim to \$17,819.00 as per the hand written statement submitted as evidence. The tenant's monetary amended monetary claim was not properly filed as per the rules or procedure nor was the landlord or the Residential Tenancy Branch properly served with an amended application. As such, the tenant's application is restricted to the original monetary claim applied for of \$980.00.

The hearing was adjourned due to a lack of time. Both parties were notified of the process of receiving a new notice of an adjourned hearing and that no new evidence was to be submitted.

On August 28, 2014 the hearing was re-convened, but due to technical difficulties the hearing adjournment was re-scheduled to September 9, 2014.

On September 9, 2014 the hearing was re-convened where both parties attended and participated by conference call. At the outset the tenants stated that they wished to withdraw their application as they wish to re-submit a complete claim as a whole. The landlord made no comment on the tenant's withdrawal of their application. As such, no further action is required for the tenant's monetary claim.

#### Issue(s) to be Decided

Is the landlord entitled to a monetary order?

#### Background and Evidence

This tenancy began on August 1, 2006 on a month to month basis as shown by submitted copy of the signed tenancy agreement. Both parties confirmed that the named landlord on the agreement was the previous landlord which this landlord has assumed the responsibility for the tenancy in purchasing the rental property.

The landlord seeks a monetary claim of \$3,672.39 which consists of unpaid utilities totalling, \$922.39, an NSF cheque charge of \$25.00, a late rent fee of \$25.00 and \$2,700.00 for clean up charges of the yard and hazardous materials.

The landlord has provided copies of 16 invoices for unpaid utilities. The tenant disputes this claim stating that they have not received any bills or any notice to pay any outstanding claims of unpaid utilities. The landlord states that he notified the tenant on September 16 based upon his own personal diary notes.

The landlord seeks recovery of \$25.00 for an NSF charge for November of 2009. The tenant disputes this claim stating that he paid cash for this, but was not issued any receipt for payment.

The landlord seeks \$25.00 for a late rent fee for January 2014 as the tenant failed to pay rent when it was due on the 1<sup>st</sup> of each month. The tenants dispute this claim stating that he has a receipt for which "paid in cash" was written. The landlord relies on

an email dated January 4, 2014 from the tenant which states that the landlord could pick up the rent.

The landlord seeks \$2,700.00 for clean up and removal of hazardous materials left on the property by the tenants based upon an estimate. The tenant disputes this claim stating that the items referred to by the landlord were items left by the previous tenants. The landlord has submitted a copy of an estimate from by KCJ Contracting for the cost of the clean up and removal service.

### Analysis

I accept the evidence of both parties and have reviewed all of the documentary evidence for this submitted by both parties.

The onus or burden of proof lies with the party who is making the claim. In this case, the burden lies with the landlord. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

On the landlord's first monetary claim of \$922.39 in unpaid utilities, I find that I prefer the evidence of the landlord over that of tenant. Although the tenant disputes this claim stating that the previous landlord included the utilities with the rent, the landlord disputes this and the tenant has failed to provide sufficient evidence of this agreement to satisfy me. The landlord is successful in this portion of the claim of \$922.39 based upon the submitted invoices provided by the landlord.

On the landlord's second claim of \$25.00 for an NSF charge from October 2009, I find that the landlord has failed. The tenant states that he paid cash that month. The landlord has not provided sufficient evidence that an NSF charge was incurred. For example the landlord did not provide a copy of a tenant ledger showing the NSF payment nor the invoice/receipt/statement from the bank showing a NSF transaction and charge. This portion of the landlord's claim is dismissed.

On the landlord's third claim of \$25.00 for a late rent fee for January 2014, I prefer the evidence of the landlord over that of the tenant. The landlord relies on an email dated January 4, 2014 that shows that the tenant arranged with the landlord to pick up the rent late. The tenant disputes this claim stating that he paid in cash and has a receipt to prove it. The tenant did not provide the receipt as evidence. The landlord has established a claim for \$25.00.

On the landlord's last monetary claim of \$2,700.00 in estimated costs for yard and hazardous materials disposal, I find that the landlord has failed. The tenant has disputed this claim stating that those items left by the tenant were present when he began the tenancy. The landlord disputes this, but has not provided sufficient evidence to satisfy me of the condition of the rental property before and after the tenancy began. As well, the landlord relies on an estimate and not any proof of any actual work performed. This portion of the claim is dismissed.

The landlord has established a total monetary claim of \$947.39. The landlord is also entitled to recovery of the \$50.00 filing fee. The landlord is granted a monetary order for \$997.39. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

### Conclusion

The landlord is granted a monetary order for \$997.39.

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: September 9, 2014

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Residential Tenancy Branch

