



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the tenant – CNR, MNDC, FF

For the landlord – OPR, MNR, MNSD, FF

### Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied to cancel the 10 Day Notice to End Tenancy for unpaid rent and utilities, for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application. The landlord applied for an Order of Possession for unpaid rent or utilities; 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 and pet deposit; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord's agent attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

At the outset of the hearing the parties advised that the tenant is no longer residing in the rental unit, and therefore, the landlord withdraws the application for an Order of Possession and the tenant withdraws the application to cancel the Notice.

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord entitled to a Monetary Order for unpaid rent and utilities?
- Is the landlord permitted to keep all or part of the security and pet deposit?

Background and Evidence

The parties agreed that this tenancy started on October 15, 2013 for a fixed term of one year. The tenant vacated the unit on October 31, 2014 after providing proper notice to the landlord. Rent for this unit was \$1,350.00 per month due on the 15<sup>th</sup> of each month. The tenant paid a security deposit of \$675.00 and a pet deposit of \$250.00 in October, 2013.

**The tenant's application**

The tenant testified that after signing the tenancy agreement the tenant misplaced a copy of her agreement. Later the landlord approached the tenant and asked the tenant to pay 33 percent share of the utility bills. The tenant testified that at that time she did not know if utilities were included in the rent so continued to pay the utilities. The tenant testified that the percentage share of the utilities increased to 50 percent in March, 2014.

The tenant testified that later the tenant found her copy of the tenancy agreement and discovered that water, electricity and heat were supposed to have been included in the rent. A copy of the tenancy agreement has been provided in documentary evidence. The tenant testified that she showed this agreement to the landlord and the landlord said they now had a verbal agreement for the tenant to pay the utilities. The tenant testified that the landlord had approached the tenant's two adult daughters, one of which lived in the rental unit but was not a tenant and one who was only visiting the tenant and had spoken to the daughters about increasing the utility percentage. The tenant testified that the landlord got her daughters to agree verbally to pay the utilities

and the tenant reprimanded her daughters for doing this as they did not have the right to make verbal agreements concerning the tenancy with the landlord or the landlord's agent.

The tenant testified that over the course of the tenancy the tenant has paid \$1,422.34 in utilities to the landlord. The tenant seeks to recover this amount from the landlord along with the \$50.00 filing fee.

The landlord's agent testified that the tenancy agreement was incomplete and never signed by the landlord. The landlord's agent testified that at the beginning of the tenancy they were supposed to meet with the tenant to sign the agreement. They had discussed with the tenant that the tenants share of utilities would be based upon occupancy in each of the units and at that time the tenants share would be 33 percent. The landlord agreed that this is not documented in the tenancy agreement. The landlord's agent testified that the boxes concerning water, electricity and heat were only checked with regard to the 33 percent share for the tenant. The tenant knew she had to pay the utilities and started to pay them at the outset. The landlord's agent testified that the tenant would not have paid the utilities for nine months if she did not have to. The landlord's agent testified that whenever there was a discussion about the rental unit it was always between the landlord's agent and the tenant's daughter who resided in the unit. The landlord disputed the tenant's claim to recover the utilities paid.

### **The landlord's application**

The landlord's agent testified that the tenant failed to pay rent due on September 15, 2014 of \$1,350.00 and the tenant failed to pay rent for the last 15 days of the tenancy on October 15, 2014 of \$675.00. The landlord served the tenant with a 10 Day Notice to End Tenancy for unpaid rent on September 22, 2014 in person and the tenant had already given written notice to end the tenancy on September 16, 2014. The landlord's agent testified that the tenant still owes rent of \$2,025.00.

The landlord testified that the tenant also owes utilities for hydro and gas as the tenant stopped making payments towards her share of the utilities after finding her tenancy

agreement. The tenant's share of the utility bills for hydro and gas is now 50 percent from March, 2014 and are as follows:

**Hydro**

August 5 billing date - \$131.85

October 3 billing date - \$142.48

Mid October to October 31 estimated at \$61.00

**Gas**

July 31 billing date - \$22.08

August 29 billing date - \$19.92

September 30 billing date – 22.86

October 30, billing date – 28.16

In total the landlord seeks to recover \$428.35

The landlord seeks an Order to keep the tenant's security and pet deposit to offset against the unpaid rent and utilities. The landlord also seeks to recover the filing fee of \$50.00.

The tenant agreed that she owes rent to the landlord of \$2,025.00 and agreed that the landlord may keep the security and pet deposit in partial payment of the rent arrears.

The tenant disputed that she owed utilities and testified that as she had never changed the terms of the tenancy agreement the landlord is not entitled to charge the tenant for utilities as they were included in the rent as discussed above.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the tenant's application; I have reviewed the tenancy agreement and this agreement clearly indicates that the rent included water, electricity and heating. I refer the parties to s. 14(1) of the *Act* which states:

**14** (1) *A tenancy agreement may not be amended to change or remove a standard term.*

The landlord's agent argued that this term implied that the tenant had to pay a percentage of the utilities according to the amount of occupants in each unit; however, this is not indicated on the tenancy agreement. When one person's evidence is contradicted by that of the other then the person making the claim has the burden of proof to provide corroborating evidence to support that claim. In this case I find the tenancy agreement is a legal and binding agreement between the parties; even though it has not been signed by the landlord the tenant is entitled to rely on information in the agreement that was drawn up by the landlord or the landlord's agent and signed by the tenant. I find the tenant's arguments that she misplaced the tenancy agreement and paid utilities for the first nine months in good faith as she did not know that utilities were included in the rent have merit and the landlord should have known this information and should not have collected utilities from the tenant.

If the landlords made a mistake on the tenancy agreement they could have asked the tenant to agree to sign a new tenancy agreement or addendum to the agreement but should not have sought out verbal agreement from the tenant's daughter who is not named as a tenant on the tenancy agreement.

Consequently I find in favor of the tenant's claim to recover the utilities paid during the tenancy of **\$1,422.34**.

With regard to the landlord's claim for unpaid rent; the tenant agreed that rent is owed of **\$2,025.00** I therefore uphold the landlords claim to recover this amount from the tenant.

With regard to the landlord's claim for unpaid utilities of \$428.35; as I have found that the rent includes utilities this section of the landlord's claim is dismissed.

I Order the landlord to keep the security and pet deposits of \$925.00 in partial satisfaction of the unpaid rent.

A both party's claims have merit and each party is entitled to a monetary award I have offset the high claim against that of the lower claim after deductions have been made for the security and pet deposit. The tenant will receive a Monetary Order for the following amount:

Unpaid rent for the landlord	\$2,025.00
Less the security and pet deposits	(-\$925.00)
Total amount due to the landlord	\$1,100.00
Amount due to the tenant for overpaid utilities	\$1,422.34
Amount owed to the tenant	\$322.34

As both parties claims have merit both parties must bear the cost of the filing fees paid for each application.

### Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim of \$2,025.00. The landlord's monetary award has been offset against that of the tenants.

I HEREBY FIND in favor of tenant's monetary claim of \$1,422.34. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$322.34** pursuant to s. 67 of the *Act*. The Order must be served on the landlord. If the landlord fails to pay the Order, the Order is enforceable 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: November 06, 2014

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Residential Tenancy Branch

