



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNR, 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 the Landlord for a Monetary Order for: damages to the rental unit; unpaid rent or utilities; to keep the Tenant’s security deposit; money owed or compensation for loss or damage under the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement; and, to recover the filing fee.

The Landlord appeared for the hearing with the Co-Landlord who both provided affirmed testimony during the hearing as well as documentary evidence prior to the hearing. There was no appearance for the Tenant during the hour long hearing and no submission of written evidence prior to the hearing. As a result, I turned my mind to the service of the documents for this hearing by the Landlord.

The Landlord testified that she served a copy of her Application, the Notice of Hearing documents and the evidence to the Tenant by registered mail on January 24, 2015. The Landlord testified that the Canada Post website indicates that it was received and signed for by the Tenant on January 31, 2015. The Landlord provided the Canada Post tracking number into oral evidence which was recorded on the inside cover of the file. Based on the undisputed evidence of the Landlord, I find the Tenant was served in accordance with Section 89(1) (c) of the Act. The hearing continued to hear the undisputed evidence of the Landlord.

### Preliminary Issues

During the hearing, the Landlord decided that she wanted to only deal with her monetary claim for unpaid rent and utilities. Therefore, the remainder of the Landlord’s monetary claim was withdrawn. The Landlord is not barred from making an Application for monetary losses which were not dealt with in this hearing.

Issue(s) to be Decided

- Is the Landlord entitled to unpaid rent and utilities in this tenancy?
- Is the Landlord allowed to keep the Tenant's security deposit in partial satisfaction of the Landlord's monetary claim?

Background and Evidence

The Landlord testified that this tenancy began on January 16, 2014 for a fixed term of six months after which it continued on a month to month basis. A written tenancy agreement was completed which shows rent was payable in the amount of \$1,000.00 on the 15<sup>th</sup> day of each month. The Landlord testified that the Tenant was responsible for putting the electricity bills in her name and paying the account as per the tenancy agreement. The Tenant paid the Landlord \$500.00 as a security deposit on December 13, 2013 which the Landlord still retains.

The Landlord testified that the tenancy ended when the Tenant vacated the rental unit on January 15, 2015 as a result of being served with a notice to end tenancy for cause. The notice to end tenancy was provided into evidence. The Tenant provided the Landlord with a forwarding address on the move out Condition Inspection Report conducted on January 15, 2015.

The Landlord testified that the Tenant failed to pay full rent on December 15, 2014, only paying half of it in the amount of \$500.00. Therefore, the Landlord now claims for unpaid rent in the amount of \$500.00. The Co-Landlord confirmed the Landlord's testimony in this respect.

The Landlord testified that the Tenant failed to put the utilities in her name at the start of the tenancy. As a result, in December 2014 it came to the attention of the Landlord that the utility company were going to shut off the electricity if the account was not paid. The Landlord testified that she discovered that the Tenant had been paying the utilities but had stopped doing so for September 2014 onwards.

The Landlord testified that she paid some of the arrears and then sent the Tenant a demand letter on December 8, 2014 informing that payment was required. The Landlord testified that she sent the Tenant another letter on January 6, 2015 advising that there were utility arrears outstanding for September, October, November, and anticipated utilities for December 2014 and January 2015 for which she had not yet received a utility bill for. These demand letters were provided into evidence. The Landlord now claims unpaid utilities in the following amounts:

- \$55.09 for September 2014
- \$50.56 for October 2014
- \$56.86 for November 2014

The Landlord provided utility bills which indicate the above amounts being claimed for. The Landlord also testified that at the time she had made the Application she was not aware of the exact utility amounts owed for December 2014 and January 2015. The Landlord testified that she had now received the utility bill for the period of November 28, 2014 to January 22, 2015 (55 days) for an amount of \$78.07. Therefore, for the time the Tenant was occupying the rental unit (up until January 15, 2015), the Tenant was responsible for 48 days of utilities. Therefore, the Landlord now claims \$68.13  $((78.07 / 55 \text{ days}) \times 48 \text{ days})$ .

The Landlord testified that she did receive \$50.00 towards utilities from an unknown person who was suspected of being the Tenant's unauthorised roommate during the later stages of the tenancy. The Landlord stated that this could be deducted from the total claimed for utilities.

### Analysis

The Tenant provided the Landlord with a forwarding address on January 15, 2015. The Landlord made the Application to keep the Tenant's security deposit on January 21, 2015. Therefore, I find the Landlord made the Application within the 15 day time limit stipulated by Section 38(1) of the Act.

I have carefully considered the undisputed affirmed testimony and the documentary evidence of the Landlord in this Decision as follows. Section 26(1) of the Act requires a tenant to pay rent when it is due under a tenancy agreement whether or not the landlord complies with the Act.

I accept the undisputed testimony of the Landlord and the Co-Landlord that the Tenant only paid half of the rent for December 2014. Therefore, the Tenant is liable for the other half in the amount of \$500.00.

I also accept the oral testimony and documentary evidence detailed above, that the Tenant has failed to pay utilities owed to the Landlord under the tenancy agreement. Therefore, I find the Tenant is liable for a total amount of utilities for \$180.64  $((\$55.09 + \$50.56 + \$56.86 + 68.13) - \$50.00)$ .

As the Landlord has been successful in this matter, the Landlord is also entitled to recover the \$50.00 Application filing fee pursuant to section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlord is \$730.64 (\$500.00 + \$180.64 + \$50.00).

As the Landlord already holds the Tenant's \$500.00 security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded, pursuant to Section 72(2) (b) of the Act.

As a result, the Landlord is issued with a Monetary Order for the remaining balance of \$230.64. This order must be served on the Tenants and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court if the Tenant fails to make payment in accordance with the Landlord's instructions. Copies of this order are attached to the Landlord's copy of this Decision.

### Conclusion

The Tenant has failed to pay rent and utilities as required by the tenancy agreement. Therefore, the Landlord may keep the Tenant's security deposit of \$500.00 and is issued with a Monetary Order for the remaining balance of \$230.64. The Landlord withdrew the remainder of her monetary claim not related to rent or utilities and is at liberty to re-apply for these amounts.

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 04, 2015

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Residential Tenancy Branch

