



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, O  
                              MNSD, MNDC, FF

### Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenant. The landlord has applied for a monetary order for unpaid rent or utilities. The tenant has applied for a monetary order for return of all or part of the pet damage deposit or security deposit; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

The landlord attended the hearing accompanied by his spouse, who did not testify or take part in the proceedings, and the tenant also attended. The parties each gave affirmed testimony and were given the opportunity to question each other with respect to the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

### Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for unpaid rent or utilities?
- Has the tenant established a monetary claim as against the landlord for return of all or part of the pet damage deposit or security deposit?
- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for double the amount of the security deposit and loss of Wifi?

### Background and Evidence

**The landlord** testified that this month-to-month tenancy began on February 1, 2015 and ended on April 30, 2015. Rent in the amount of \$795.00 per month was payable on the 1<sup>st</sup> day of each month as well as hydro costs. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$397.50 as well as \$795.00 for rent and \$40.00 for hydro in advance for the first month of the tenancy. The security deposit of \$397.50 was returned to the tenant on May 11, 2015 by registered mail. A copy of the tenancy agreement has been provided.

The landlord further testified that the tenant had a primary residence at another location and this rental unit was a part-time residence, but rented on a month-to-month basis. The tenant has another home elsewhere and the landlord has that address and has known it since the beginning of the tenancy.

The rental unit has a hydro meter and the bill is sent to the landlord every 2 months. From that, the landlord calculates the amount payable by the tenant including 5% tax and an invoice for that amount is delivered to the tenant. The invoice also shows the amount of rent payable for the following month. The landlord gave the tenant such an invoice dated April 1, 2015 showing the amounts of \$63.13 for hydro and \$795.00 for rent for April.

The landlord also testified that the tenant gave written notice on February 28, 2015 to end the tenancy effective March 31, 2015. Then the tenant retracted it in writing by emailing the landlord and explaining in the email that she tried to get her brother-in-law to not serve the notice but couldn't reach him in time, and that she would be in the rental unit for another month. The landlord gave the tenant the invoice, which shows that the landlord accepted the tenant's later date of vacating the rental unit.

The landlord claims \$795.00 for April's rent, \$63.13 for hydro for February and March, 2015, \$45.00 for bank charges and late fees, \$15.11 for registered mail sent to the tenant on May 11, 2015, another \$10.50 for registered mail, and an additional \$11.34 for registered mail to serve the landlord's amended application, as well as recovery of the filing fee. Copies of registered mail receipts have been provided. The landlord is not claiming the cost of hydro for the month of April, 2015 because the amount is negligible.

With respect to the tenant's claim, the landlord disagrees that Wifi didn't work, and if the tenant had difficulty with it, the tenant didn't tell the landlord. It worked for the landlord who lives nearby, it works now, and the landlord has no idea what the problem was or that there was a problem.

**The tenant** testified that the tenancy agreement was on a month-to-month basis and hydro was \$40.00 per month.

The landlord was personally given the notice to vacate the rental unit on February 28, 2015 which was effective March 31, 2015. The tenant agrees that the email requesting to stay another month was sent to the landlord, however the landlord did not respond. The landlord sent registered mail to the tenant on April 8, 2015 which included the invoice for April's rent, but the tenant moved out on March 31, 2015 leaving the keys in the rental unit. The landlord knew that and told the tenant he was going to have someone in to view the suite at the end of March, 2015 but they didn't show up. Also, the landlord knew the rental unit was vacant; he was always coming by and knocking on the door so it is not realistic that the landlord didn't know the tenant had moved.

The rental unit was a secondary home for the tenant and the landlord had the tenant's primary mailing address. The landlord also received the forwarding address by registered mail which was sent on April 27, 2015. The tenant did not keep a copy of that letter, and applied for dispute resolution the same day. The landlord had the tenant's forwarding address on February 28, 2015 and again on April 27, 2015 but did not return the security deposit until May 11, 2015, which the tenant received on May 13, 2015. The tenant claims double the amount.

With respect to Wifi, the tenant testified that it is included in the rent and was not operable; it would come and go. If the tenant had known that it was sketchy, the tenant would not have rented. The tenant owns a business and pays \$70.00 per month for each room for Wifi and claims \$70.00 as against the landlord for failure to provide it in accordance with the tenancy agreement.

### Analysis

Where a party makes a monetary claim as against another party, the onus is on the claiming party to establish the claim. In this case, I find that dates are particularly important. The tenant gave notice to end the tenancy on February 28, 2015 effective March 31, 2015. The parties agree that the tenant sent an email retracting that notice, however the landlord did not respond.

I refer to Residential Tenancy Branch Policy Guideline #11 which states:

"A landlord or tenant cannot unilaterally withdraw a Notice to End Tenancy. With the consent of the party to whom it is given, but only with his or her consent, a Notice to End Tenancy may be withdrawn or abandoned prior to its effective date. A Notice to End Tenancy can be waived (i.e. withdrawn or abandoned), and a new or continuing tenancy created, only by the express or implied consent of both parties."

The landlord did not respond to the tenant's request that the tenancy end at the end of April rather than March, and I see no reason to find that the tenant believed the landlord had agreed to that. Therefore, I find that the landlord had notice that the tenancy would end on March 31, 2015 and the landlord's application for a monetary order for unpaid rent for April, 2015 cannot succeed.

With respect to the landlord's claim for unpaid hydro, I have reviewed the tenancy agreement and it is clear that hydro is the responsibility of the tenant. I do not see that hydro was set at \$40.00 per month, and I find that the landlord has established a claim of \$63.13.

The *Residential Tenancy Act* provides for recovery of a filing fee for the cost of making an application for dispute resolution, but not for service costs, and therefore the landlord's applications for recovery of registered mail costs is dismissed.

With respect to the landlord's application for late fees and N.S.F. fees, the *Act* allows a landlord to make a claim of no more than \$25.00 for late fees if it's contained in the tenancy agreement, and for the cost of returned cheques by the financial institution. In this case, the tenancy agreement specifies late fees, and I find that the landlord may only claim the maximum amount of \$25.00. The landlord has not provided any testimony or evidence of the cost for returned cheques. Having found that the tenant was not obligated to pay rent for April and no other evidence was lead with respect to late rent for any other month during the tenancy, the landlord's application for late fees and N.S.F. fees must be dismissed.

With respect to the tenant's application for double the amount of the security deposit, the *Act* requires a landlord to return a security deposit and pet damage deposit to a tenant in full within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or must make a claim against it by filing an application for dispute resolution within that 15 day period. If the landlord does neither, the landlord must repay the tenant double. In this case, having found that the tenancy ended on March 31, 2015, and the parties agree that the landlord had the tenant's forwarding address in writing since the beginning of the tenancy, the landlord had until April 15, 2015 to return the deposit. The tenant received the deposit from the landlord on May 11, 2015, which is beyond the 15 day period, and therefore I find that the tenant is entitled to double, or an additional \$397.50.

With respect to the tenant's claim for Wifi, I am not satisfied that the tenant has established its worth or that the tenant mitigated any loss by notifying the landlord. The parties disagree on that point, and where it boils down to one person's word over another, the claim has not been established.

Having found that the landlord is owed \$63.13 for hydro and the tenant is owed \$397.50, I set off the amounts, and I grant a monetary order in favour of the tenant for the difference in the amount of \$334.37. Since both parties have been partially successful, I decline to order that either party recover the filing fees.

### Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$334.37.

This order is final and binding and may be enforced.

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 30, 2015

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Residential Tenancy Branch

