



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNDC, MNSD, O, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid utilities and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38;
- other unspecified relief; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. This hearing lasted approximately 68 minutes in order to allow both parties, particularly the landlord, to make full submissions.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package ("Application") with the exception of the landlord's monetary order worksheet. The tenant confirmed that she was ready to proceed with this hearing on the basis of the landlord's Application including the monetary order worksheet that she did not receive. The tenant confirmed that she was aware of the landlord's claims and that the landlord was seeking 40% of gas and hydro utilities from her, which was the breakdown on the landlord's monetary order worksheet. The tenant confirmed that she did not wish to request an adjournment of this hearing and that she wished to proceed with the hearing and have a final resolution of this matter. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's Application and I proceeded with this hearing on the basis of the landlord's Application, including the monetary order worksheet, with the tenant's consent.

The landlord confirmed receipt of the tenant's written evidence package. The landlord confirmed that she reviewed the tenant's written evidence package and was ready to proceed with this hearing on the basis of the tenant's entire written evidence package. In accordance with sections 88 and 90 of the *Act*, I find that the landlord was duly served with the tenant's written evidence package.

The landlord requested an amendment to her Application to increase the monetary order sought from \$1,646.55 to \$1,716.19 plus the \$50.00 filing fee. The tenant consented to this amendment. In accordance with section 64(3)(c) of the *Act*, I amend the landlord's Application to increase the monetary order to \$1,716.19, pursuant to the tenant's consent.

### Issues to be Decided

Is the landlord entitled to a monetary award for unpaid utilities and for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to other unspecified relief?

Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

Both parties agreed that this fixed term tenancy began on April 15, 2013 and was to end on October 31, 2013, after which it transitioned to a month-to-month tenancy. The landlord confirmed that the tenant vacated the rental unit on June 6, 2015, and that the tenant's boyfriend remained in the rental unit until August 31, 2015, when he vacated the rental unit. The tenant disputed the landlord's contentions, indicating that she vacated the rental unit on August 31, 2015, after providing the landlord with written notice by July 31, 2015. The landlord acknowledged receiving this written notice, but confirmed that it was on behalf of the tenant's boyfriend, not the tenant.

Both parties agreed that monthly rent in the amount of \$850.00 was due on the first day of each month and a security deposit of \$425.00 was paid by the tenant and the landlord continues to retain this entire deposit. A written tenancy agreement was provided for this hearing and the landlord confirmed that the company named in the

tenancy agreement was her former property management company. The landlord confirmed that she owns this rental unit and that she had previously hired the property management company to handle this tenancy. Both parties agreed that move-in and move-out condition inspection reports were completed for this tenancy. The tenant confirmed that she personally provided the landlord with a letter containing her forwarding address on June 6, 2015.

The landlord seeks a total of \$669.86 for hydro costs and \$960.35 for gas costs from the tenant for the entire period of this tenancy from 2013 to 2015. The landlord provided a breakdown of the amounts owed by the tenant, including the bills, with the exception of three bills. The landlord stated that the last gas bill was in the amount of \$10.00 and the last two hydro bills were for \$15.00 and \$20.00, but that she was unable to submit these bills prior to this hearing.

Both parties agreed that the tenancy agreement states that the tenant owes 40% of gas and hydro costs in addition to the monthly rent each month. Both parties agreed that the landlord provided the tenant with all of the gas and hydro bills on August 22, 2015. The landlord claimed that she was suffering from mental health issues during the entire tenancy, such that she was unable to provide the tenant with the bills on an earlier date. The tenant stated that she should not be responsible for the above costs because the landlord provided her with the bills at the end of her tenancy, rather than on a monthly basis, such that she had no notice of the amounts owed during the two-year period.

### Analysis

Section 67 of the *Act* states that when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the landlord must satisfy the following four elements:

1. Proof that the loss exists;
2. Proof that the loss occurred due to the actions or neglect of the tenant in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss;
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss being claimed.

The landlord's claims for \$10.00 in gas costs and \$35.00 in hydro costs, are dismissed without leave to reapply, as the landlord did not provide copies of the bills. These bills would have been for costs incurred prior to the end of this tenancy on August 31, 2015, and this hearing was held on October 2, 2015. This includes the gas bill from August 6 to 31, 2015 and the hydro bill from July 8 to August 31, 2015. The landlord had ample

time prior to this hearing to acquire these bills and provide them to the tenant and the Residential Tenancy Branch ("RTB") prior to this hearing. Therefore, the landlord's claims fails part 3 of the above test, in failing to provide documentary evidence of the amounts owed.

I award the landlord \$151.30 in gas costs for the period from February 3, 2015 to August 6, 2015. This amount is 40% of the total gas costs of \$378.24. As the landlord did not produce the last bill from August 6 to 31, 2015, as noted above, I am unable to award her any amount for this period.

I award the landlord \$111.69 in hydro costs for the period from February 5, 2015 to July 7, 2015. This amount is 40% of the total hydro costs of \$279.22. As the landlord did not produce the last two bills from July 7 to August 31, 2015, as noted above, I am unable to award her any amounts for this period.

I award the landlord the above costs from February 2015 onwards, as I find that she is entitled to these amounts as per the tenancy agreement. The tenant agreed that as per the tenancy agreement, she was required to pay 40% of the total gas and hydro costs. However, these costs are payable on a monthly basis for gas and a bi-monthly basis for hydro. Therefore, the tenant must be given notice of these costs, by way of the landlord providing her with a copy of the bills on a monthly or bi-monthly basis as the bills arrive, so that the tenant is aware of the costs at that given time. Providing the tenant with these bills two years later, when her tenancy is ending, and asking her to provide reimbursement to the landlord at that time, is unreasonable.

Accordingly, I find that the landlord has waived her right to claim for gas and hydro costs from April 15, 2013, when the tenancy began, until the above dates as noted in February 2015. I find that the landlord's conduct of not demanding payments for these utility bills within a reasonable time period from when they became due, amounts to an implied waiver of her right to claim for these costs. I find that the time periods from February 2015 until July or August 2015, as noted above, are reasonable time periods that the tenant can anticipate owing costs that are not too far removed from when the tenant received the bills in August 2015.

I find that the tenant is not entitled to double the value of her security deposit from the landlord. The landlord filed her Application on July 31, 2015 and amended it on September 15, 2015, after the tenancy ended. I find that the landlord made her application within the 15 days of the end of the tenancy on August 31, 2015, as per section 38 of the *Act*, to retain the tenant's security deposit. I find that the landlord's right to claim against this deposit was not extinguished as both parties completed move-in and move-out condition inspection reports as required for this tenancy.

As the landlord was successful in her Application, I find that she is entitled to recover the \$50.00 filing fee from the tenant.

The landlord continues to hold the tenant's security deposit of \$425.00. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain \$312.99 from the tenant's security deposit in full satisfaction of the monetary award. No interest is payable over this period. I order the landlord to return the remaining \$112.01 from the tenant's security deposit to the tenant.

### Conclusion

I order the landlord to retain \$312.99 from the tenant's security deposit in full satisfaction of the monetary award. I order the landlord to return the remaining \$112.01 from the tenant's security deposit to the tenant. I issue a monetary order in the tenant's favour in the amount of \$112.01 against the landlord. The tenant is provided with a monetary order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The landlord did not provide any evidence with respect to her claim for other unspecified relief. Accordingly, this portion of her Application is dismissed without leave to reapply.

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: October 15, 2015

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Residential Tenancy Branch

