



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC, FF

### Introduction and Preliminary Matter

This hearing convened as a result of a Tenant's Application for Dispute Resolution wherein the Tenant sought return of her security deposit as well as monetary compensation for money owed or compensation for damage or loss under the *Act, Regulation* or tenancy agreement.

At the initial hearing on January 11, 2016, only the Tenant and her two witnesses appeared. She gave affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions to me.

The Tenant confirmed that she was still in occupation of the rental unit. As such, she conceded that her application for return of her security deposit was premature and requested to withdraw this application. Pursuant to section 64(3)(c) of the *Act* I amend her application to remove this request.

At the January 11, 2016 hearing the Tenant testified that her friend, T.M., personally served the Landlord, T.E., with the Notice of Hearing and her Application on July 22, 2015.

The Landlord named on the Residential Tenancy Agreement was a corporate Landlord, P.R.V. Ltd. as well as an individual by the name of "K.H." The Tenant testified that K.H. is now using another name, "K.F."

I found the Tenant had not served the corporate landlord, which was named on the tenancy agreement, and as such I adjourned the matter to permit the Tenant to amend her application and re-serve the corporate Landlord.

The Landlord's representative, K.F., who previously went by the name K.H. and who was named on the tenancy agreement appeared at the March 4, 2016 hearing. K.F. testified that T.E. purchased the rental property in February 2012 from the corporate Landlord, P.R.V. Ltd. . K.F. is not affiliated with P.R.V. Ltd.

K.F. confirmed that T.E. is the Landlord and that he did receive the Tenant's application on July 22, 2015. She further stated that T.E. informed her that he did not want to deal with the application and directed her to act as his agent at the hearing on March 4, 2016.

### Issues

1. Is the Tenant entitled to monetary compensation from the Landlord?
2. Should the Tenant recover her filing fee?

### Background Evidence

The Tenant has resided in two different rental units within the same building. The Tenant moved from rental unit B21 to her current rental unit, D20, in September of 2012. At that time she entered into a new tenancy agreement. That agreement was not in evidence.

The original tenancy agreement for B21 was introduced in evidence. That document indicated the Tenant paid a security deposit of \$287.50 on July 1, 2011 and a pet damage deposit of \$287.50 over the course of a few months. K.F. confirmed that the Landlord continues to hold the Tenant's deposits in the amount of \$575.00 as those funds were simply transferred to the new tenancy agreement for D20.

The Tenant testified that when she moved from B21 to D20 in September 1, 2012, she did not initially enter into a new residential tenancy agreement; however, she said that once K.F. came back to work as the property manager, they entered into a new tenancy agreement. She confirmed that she did not receive a copy of the new tenancy agreement, although she stated that it was essentially the same agreement, on "new paper".

The tenancy agreement provided in evidence confirms that heat is included in the rent; electricity is not and is the responsibility of the Tenant. Additionally, "water" is not included in the rent. The parties agreed that the current agreement also provides that heat is included in the rent, and electricity is separate and to be paid for by the Tenant.

The Tenant confirmed that her heat was provided by electrical baseboards in both B21 and D20. She stated that when she first moved into the rental she believed that the heat generated from her baseboards was separate from her electricity.

The Tenant testified that her electricity bill was paid directly by Income Assistance at a rate of \$75.00 per month. This amount is noted on the electricity bills introduced in evidence as a \$75.00 CR per month for the months August 2012 to June 2014.

The Tenant confirmed that she did not pay any amount towards her electricity bill, nor did she even look at the bills, as she understood the \$75.00 paid by income assistance was sufficient to cover the cost.

The Tenant testified that she discovered that she was responsible for paying for the heat on June 13, 2014 when she received a Notice of Disconnection from the electricity company. At that time, the amount of \$1,237.46 was outstanding. The Tenant testified that her electricity was disconnected as a result of non-payment.

The Tenant testifies that she spoke to T.D. on June 15, 2014 about her account. T.D. attended the rental unit, and confirmed that the Tenant was paying for heat, contrary to the tenancy agreement. T.D. then spoke with the Landlord, T.E., and tried to negotiate repayment by the Landlord to the Tenant of the \$1,200.00 owing and to have the Landlord put the Tenant's electrical account into the building name and to simply have the Tenant pay \$50.00 extra per month.

The parties attended arbitration on June 17, 2015. At that hearing, the Arbitrator found as follows:

*I accept the undisputed testimony of the tenant and the tenant's witness that heat was included in rent. I further accept the undisputed testimony that there was an agreement made in 2014 that the hydro was to be transferred from the tenant's name to the landlord's name and in exchange the tenant agreed to have their rent increased by \$50.00, per month to cover their portion of the electricity. I find the agreement reasonable based on the evidence presented.*

The Arbitrator ordered as follows:

*“...I order the landlord to have the hydro account placed in their name no later than July 31, 2015.*

*I further order in support of the agreement made in 2014, that commencing August 1, 2015, the tenant's rent of \$835.00 will be increased by \$50.00 and the new rent payable to the landlord is **\$885.00**.*

*...*

*Should the landlord fail to comply with my order the tenant is authorised to deduct the full amount of the hydro invoice, when the invoice is received, from the new rent payable.*

*The tenant must provide the landlord with a copy of the hydro invoice at the time the deduction is made from rent. The tenant should keep a copy of the invoice and a detailed record.*

*The **tenant in cautioned** not to make any other deductions from rent. Should the tenant feel they are entitled to additional money for over payment of prior hydro invoices, they must make an application for dispute resolution and have an arbitrator determine the appropriate amount, if any, they may withhold.”*

The Tenant applied for dispute resolution on July 20, 2015.

In the within hearing, the Tenant confirmed that she has deducted the hydro from her monthly rent as permitted. K.F. agreed that the Tenant has reduced her monthly rent by the hydro bill, and stated that she has also provided copies of the hydro bill as Ordered. During the hearing I Ordered the Tenant to provided copies of her electrical invoices (hydro bill) from July 2015 to March 2016. She complied with my Order and the requested invoices were received by the Branch on March 7, 2016.

In the within hearing, the Tenant sought the sum of \$1,790.51 representing the amounts she overpaid for her hydro, prior to July 2015. In support she provided her hydro bills from August 31, 2012 to June 2015.

The Tenant also introduced a handwritten document wherein she noted her total hydro payments of \$6,789.51 being reduced by the sum of \$4,999.00. She did not provide any submissions on this voluntary reduction. These amounts were not disputed by the Landlord.

Both parties agreed that the Tenant has not paid the \$50.00 per month increased rent as Ordered on July 6, 2015.

Further both parties agreed that the Landlord has not put the hydro bill in his name as Ordered. K.F. testified that she was not aware why T.E. had not put the hydro in his name.

K.F. stated that she would ensure the hydro bill was in the Landlord's name by close of business the day of the hearing, March 4, 2016. In furtherance of this promise, I Ordered K.F. to provide, by March 11, 2016, proof that the B.C. Hydro Account has been transferred to the Landlord's name, as of the date of the hearing, March 4, 2016. No such proof has been received by the Branch.

### Analysis

After consideration of the evidence filed and the testimony of the parties, I find as follows.

The Landlord failed to comply with the July 6, 2015 Order which mandated he put the hydro bill in his name. In failing to do so, he has continued to breach the tenancy agreement, and the July 6, 2016 Order.

The Tenant claimed the sum of \$1,790.51 as an overpayment of her hydro from August 2012 to June 2015. This amount was not disputed by the Landlord. Accordingly, I award the Tenant the **\$1,790.51** claimed for overpayment of her hydro from August 2012 to June 2015.

The July 6, 2015 Decision amended the tenancy agreement as of that date. Pursuant to that agreement the Tenant is obligated to pay \$50.00 more in rent per month commencing July 2015. The parties agreed that the Tenant has failed to pay this amount. Accordingly, the \$1,790.51 awarded to the Tenant must be reduced by the \$450.00 in payments which should have been made for the nine months from July 2015 to March 2016 pursuant to this Order. Accordingly, I award her the sum of **\$1,340.51**.

As the Tenant has been successful, I also award her recovery of the filing fee in the amount of \$50.00 for a total of **\$1,390.51**. She is permitted to reduce her monthly rent payments until this sum is paid.

I find that no adjustment to the rent is warranted for the time prior to July 2015.

The Landlord has failed to abide by the July 6, 2015 Order, and failed to abide by my Order of March 4, 2016 to put the hydro account in his name. The Tenant is at liberty to apply for a further rent reduction pursuant to section 65(1).

Conclusion

The Tenant is awarded the sum of **\$1,390.51** representing the sum of \$1,790.51 in overpayments to her hydro and the filing fee, less the \$450.00 she should have paid for her rent for the time period July 2015 to March 2016 pursuant to the July 6, 2015 Order.

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: March 30, 2016

---

Residential Tenancy Branch

