



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNR, FF, MNDC, MNDS, FF

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- a monetary order for the return of double the security deposit pursuant to section 38 and 67 of the *Act*;
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed receipt of the notice of hearing package and the submitted documentary evidence of the other party. As such, I find that both parties have been properly served as per sections 88 and 89 of the *Act*.

At the outset the landlord's agent (the landlord) clarified that she was withdrawing her application for damages and was lowering the amount claimed for utilities only to \$615.76. The tenant acknowledged her understanding and presented no issues regarding the change.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid utilities and recovery of the filing fee?

Is the tenant entitled to a monetary order for compensation for money owed and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The

principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

Both parties confirmed that there was no signed tenancy agreement, but that this tenancy began on April 1, 2008 on a month-to-month basis. Both parties agreed that the monthly rent was \$600.00 payable on the 1st day of each month and that a \$300.00 security deposit was paid to the landlord.

The landlord seeks a monetary claim of \$615.76 for unpaid utilities for the term between October 18, 2011 and December 31, 2015. The landlord provided testimony that there was a verbal agreement for the tenant to pay 50% of the electricity bill for the basement unit as the meter is calculated in conjunction with the top floor rental unit. The tenant disputed this claim stating that at no time has she ever paid utilities as part of her tenancy. Both parties agreed that when the landlord provided a handwritten note to the tenant on October 12, 2015 of \$33.50 for an electrical bill, the tenant paid it.

The tenant seeks a monetary claim of \$870.90 which consists of:

\$270.90	Compensation Pro-rated for complying with a 2 Month Notice
\$600.00	Compensation for Double the Security Deposit as per section 38

Both parties confirmed that the tenant vacated the rental unit in compliance of the landlord serving her a 2 Month Notice. The tenant provided a copy of the 2 Month Notice dated October 28, 2015 which sets out an effective end of tenancy date of December 31, 2015 and one reason as:

The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother or child) of the landlord or the landlord's spouse.

Both parties agreed that the tenant paid no rent for December 2015. Both parties also agreed that the tenant provided her notice to vacate the rental unit in writing on December 4, 2015 to vacate the rental unit on December 15, 2015. Both parties agreed that the tenancy ended on December 15, 2015. Both also agreed that as of the date of this hearing the landlord holds the original \$300.00 security deposit.

The tenant stated that the landlord did not have her permission to retain the \$300.00 security deposit nor is she aware of an application for dispute filed by the landlord to retain it.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the

damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In the landlord's application a claim has been made that the tenant owes \$615.76 in unpaid electrical bills. The landlord claimed that there was a verbal agreement in which the tenant would pay 50% of the electrical bills as part of her tenancy in the basement by sharing those costs with top floor tenant. The tenant has disputed this claim stating that no agreement for utilities was made. The tenant also stated that during the tenancy, the landlord on only one occasion gave notice of an outstanding electrical bill, which both parties have confirmed that the tenant paid. Both parties have provided conflicting and contradictory evidence. As such, I find on a balance of probabilities that the landlord has failed to provide sufficient evidence to satisfy me that an agreement for payment of 50% of the utilities was made between the two parties. The landlord's monetary claim is dismissed.

In the tenant's application a claim for the payment of \$270.90 equal to $\frac{1}{2}$ of monthly rent in compensation is sought by the tenant as the tenant has claimed that she was not given compensation for complying with the landlord's 2 Month Notice. Both parties agreed that the tenant did not pay rent of \$600.00 for December 2015. Both parties also agreed that the tenant upon receiving the 2 Month Notice provided written notice to vacate the rental unit on December 4, 2015 to end the tenancy on December 15, 2015. I find based upon the undisputed evidence of both parties that the tenant complied with the 2 Month Notice and provided 10 Days' notice on December 4, 2015 and moved out early on December 15, 2015. Both parties agreed that the landlord did not provide any other compensation to the tenant. As such, I find that the tenant has established a claim for compensation equal to $\frac{1}{2}$ of the monthly rent claimed as \$270.90.

Section 38 of the *Act* requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the *Act* equivalent to the value of the security deposit.

Both parties have agreed that the tenancy ended on December 15, 2015 and that the landlord received the tenant's forwarding address in writing on December 14, 2015 requesting the return of the \$300.00 security deposit. Both parties agreed that the landlord did not return the \$300.00 security deposit within the allowed timeframe nor has the landlord obtained the tenant's consent to retain it or make an application to dispute its return to the tenant. As such, the tenant has established a claim for the return of the original \$300.00 security deposit and compensation under section 38 (6) as the landlord failed to comply with the *Act*.

The tenant having been successful in her application is entitled to recovery of the \$50.00 filing fee.

Conclusion

The landlord's application is dismissed without leave to reapply.

I issue a monetary order in the tenant's favour under the following terms which allows the tenant compensation following a notice under section 49 of the Act and to recover her original security deposit plus a monetary award equivalent to the value of her security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the Act:

Item	Amount
Monetary Award/ Compensation	\$270.90
Return of Security Deposit	\$300.00
Monetary Award for Landlord's Failure to Comply with s. 38 of the Act	300.00
Recovery of Filing Fee	50.00
Total Monetary Order	\$920.90

The tenant is provided with this order in the above terms and the landlord(s) must be served with a copy of this order as soon as possible. Should the landlord(s) fail to comply with this order, these orders may be filed in the Small Claims Division of the Provincial Court and enforced as orders 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: August 09, 2016

Residential Tenancy Branch