



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR MNDC MNSD FF

### Introduction

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

- a monetary order for unpaid rent and/or utilities and compensation for damage or loss 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;
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. The tenants did not attend this hearing, although I waited until 1:55 p.m. in order to enable the tenants to connect with this teleconference hearing scheduled for 1:30 p.m. The landlord's agent attended the hearing and was given a full opportunity to present evidence and make submissions.

The landlord's agent submits that at 5:50 p.m. on September 8, 2016, the landlord personally served both tenants with a copy of the Application for Dispute Resolution and Notice of Hearing. The tenants provided a forwarding address but were actually served in person at an alternative address. The landlord does not believe the tenants reside at the forwarding address provided.

Based on the above evidence, I accept the submission of the landlord's agent and I am satisfied that the tenants were personally served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to section 89 of the Act. The hearing proceeded in the absence of the tenants.

### Issues

Is the landlord entitled to a monetary award for unpaid utilities and compensation for damage or loss?

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 recover the filing fee for this application from the tenant?

### Background & Evidence

In a decision dated August 4, 2016, the landlord was granted an order of possession effective August 31, 2016 and the tenancy ended on this date. The tenant paid a security deposit of \$650.00 and a pet deposit of \$200.00 at the start of the tenancy which the landlord continues to hold. The landlord made an application for dispute resolution claiming against the security deposit within 15 days of receiving the forwarding address.

The landlord is claiming late rent fees in the amount of \$300.00 based on a charge of \$10.00/day for the period of July 6<sup>th</sup> to August 4<sup>th</sup>, 2016. The landlord's agent submits that the lease addendum provides for these late fees.

The landlord is claiming an amount of \$612.39 for unpaid utilities. The landlord's agent submits the lease addendum provides for payment of utilities by the tenants. The landlord provided a copy of a notice of overdue account dated August 8, 2016 in support of the outstanding amount. The landlord also submitted a notice of overdue account dated January 25, 2017; however, this statement was only sent to the tenants by courier on March 3, 2017, three days prior to the hearing. The landlord did not provide any evidence to support the delivery by courier.

The landlord is claiming \$500.00 for removal of garbage from the property. The landlord submitted pictures in support of this claim; however, the landlord's agent acknowledged that this picture evidence was not served on the tenants. The landlord did not submit any receipts or invoices for the removal of this garbage.

The landlord is also claiming \$3000.00 in out of pocket expenses for travel and hotel expenses incurred to remove garbage and perform repairs on the rental unit. No receipts were provided for this claim.

### Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim on a balance of probabilities. To prove a loss, the applicant must satisfy the following four elements:

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

Section 7(1)d of the Residential Tenancy Regulation provides for a charge of an administration fee of not more than \$25.00 for late payment of rent. Accordingly, I accept the landlord's claim that the tenant paid late rent for the month of July 2016 and award the landlord **\$25.00**.

The utility account statement dated January 25, 2017 is not accepted as the landlord failed to prove service of this evidence to the respondents. Further, the landlord did not amend its application to include this new outstanding balance. The landlord's claim is limited to the amount claimed in the original application and the supporting statement dated August 8, 2016. As per this statement, the total outstanding on account is \$328.85. The landlord has handwritten a total outstanding balance of \$525.13. It appears the landlord has added the "amount 60 days overdue" and the "total due on account" to arrive at a balance of \$525.13. I find the total due as per this statement to be \$328.85 and find the landlord has incorrectly added the two amounts together and failed to provide any supporting evidence of a revised outstanding balance. I accept that the tenancy agreement provided that the tenants were responsible for utilities and award the landlord the amount of **\$328.85**.

The landlord's claim for garbage removal is dismissed. The picture evidence in support of this claim was not served on the respondents and is therefore omitted from this hearing. Further the landlord has not provided any supporting invoices or receipts for this alleged expense.

The landlord's claim for out of pocket travel expenses is also dismissed. Again, the landlord has not submitted any receipts or invoices in support of this expense.

As the landlord was only partly successful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for this application.

The landlord is entitled to a total monetary award in the amount of **\$353.85** (\$25.00 + 328.85). The landlord is permitted to retain this amount from the security deposit in full satisfaction of the award.

The landlord is ordered to return to the tenants, the balance of the security deposit and pet deposit in the sum of \$496.15.

**The tenants are granted a Monetary Order in the amount of \$496.15.**

Conclusion

Pursuant to section 67 of the *Act*, I grant the tenants a Monetary Order in the amount of \$496.15. 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.

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 06, 2017

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Residential Tenancy Branch

