



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** MNR 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 utilities 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; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant confirmed receipt of the landlord's application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the tenant was duly served with the landlord's application. As both parties confirmed receipt of each other's evidentiary materials, I find that these documents were duly served in accordance with section 88 of the *Act*.

### **Issue(s) to be Decided**

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

Is the landlord entitled to a monetary order for unpaid utilities?

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

### **Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed-term tenancy began on February 1, 2016, with monthly rent set at \$3,150.00. The landlord still holds a security deposit and pet damage deposit in the amounts of \$1,575.00 each. The tenant moved out on December 22, 2016.

The landlord provided the following list of damages for their monetary claim:

<b>Item</b>	<b>Amount</b>
Repair to Drywall	\$130.00
Smoke Detector replacement	45.43
New electrical outlet	4.78
Municipal Water Levy	440.00
Recovery of Filing Fee for this Application	100.00
Security Deposit	-\$1,575.00
Pet Damage Deposit	-\$1,575.00
<b>Total Monetary Order Requested</b>	<b>-\$2,429.70</b>

The landlord testified that the tenant had moved out, leaving behind damage to the drywall and an electrical outlet. The landlord also testified that the tenant had removed the smoke detector, and had replaced it with the wrong kind. The landlord is also seeking \$440.00 for the annual water levy that the landlord stated was not included in the monthly rent. The landlord still holds both of the tenant's deposits, and is seeking to retain a portion in satisfaction of the monetary claim.

In support of the monetary claim the landlord provided statements and invoices, as well as the condition inspection report, and tenancy agreement.

The tenant testified that both parties were present for the move-in and move-out inspections, but the report is incomplete as the signatures of both parties are missing in the designated sections. The move –in inspection was done on January 30, 2016, and the move-out inspection was done on January 29, 2017. The tenant also testified that the monetary claim by the landlord for the water levy is for a period of January 2016 through to February 2017, which was not pro-rated in the landlord's monetary claim. The tenant also stated that she was never presented with the water bill at any time during this tenancy.

The tenant did not dispute the fact that the smoke detector was removed, but she had replaced it, albeit with the wrong one. The tenant testified that the landlord kept the smoke detector despite it being the wrong one. The tenant stated that she had offered

to fix the drywall holes and the broken electrical outlet, but the landlord had fixed the outlet prior to the move-out inspection without her knowledge and before she had the opportunity to remedy the situation. She testified that she offered to fix the drywall, but received no response from the landlord. The tenant testified that she had emailed the landlord her forwarding address on January 31, 2017, which she included in her evidence.

The tenant testified that the landlord failed to return any portion of her deposit within 15 days of her providing that address, and she had never agreed in writing to allow the landlord to retain any portion of her deposit.

The landlord admitted in the hearing that she had never presented the tenant with the water bill during this tenancy. The landlord testified that on February 7, 2017 she had sent an email to the tenant outlining all the deductions, including the water bill.

### **Analysis**

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant."

In this case, the landlord did file an Application within 15 days of receiving the forwarding address. Although I note the tenant's observation that neither the landlord nor the tenant signed in the designated spaces for the move-in or move-out, the tenant did sign beside her name. I also note that it is undisputed that both the parties participated in, and were present, for both the move-in and move-out inspections. Accordingly, I find that the landlord did comply with sections 23 and 35 of the *Act*

I considered the testimony of both parties, and I find that it was undisputed that the tenant did cause damage to the rental suite, which required minor repairs. The landlord submitted receipts and invoices to support the monetary claim. Accordingly I find that the landlord is entitled to monetary compensation. As the landlord failed to return the

smoke detector to the tenant, I find the landlord is only entitled to the cost of the drywall repairs and the broken electrical outlet which is \$134.78 ( $\$130.00 + \$4.78 = \$134.78$ ).

The landlord also made a monetary claim for the unpaid water bill. Although the landlord admitted in the hearing that the tenant was never presented with this bill during the tenancy, the tenant did not dispute the fact that water was not included in the monthly rent. The landlord provided, in evidence, an addendum to the tenancy agreement that notes "It is understood that Cable TV, Telephone, Internet, Alarm Monitoring, Gas, Hydro & Water/Sewer are not provided or paid for by the Landlord and are to the account of the Tenant(s)." Accordingly I find that the tenant is responsible for the pro-rated portion of the water bill that applies to this 11 month tenancy. This results in a monetary award of \$403.33 ( $\$440.00/12 = \$35.57$  per month x 11 months = \$403.33).

The landlord continues to hold the tenant's security and pet damage deposits totaling \$3,150.00. In accordance with the offsetting provisions of section 72 of the Act, I order the landlord to retain a portion of the tenant's security deposit in satisfaction of the monetary claim.

As the landlord was successful in their application, I find the landlord is entitled to recover the cost of the filing fee for this application.

### **Conclusion**

I allow the landlord to retain a portion of the tenant's security and pet damage deposits in satisfaction of the monetary claim. I issue a Monetary Order in the tenant's favour under the following terms which allows for the return of the deposits minus the monetary compensation awarded to the landlord:

<b>Item</b>	<b>Amount</b>
Drywall Repair	\$130.00
New Electrical Outlet	4.78
Pro-rated Water Bill ( $\$440/12=\$35.57*11$ )	403.33
Return of Security Deposit	-1,575.00
Return of Pet Damage Deposit	-1,575.00
<b>Total Monetary Order</b>	<b>-\$2,511.89</b>

The tenant is provided with this Order in the above terms and the landlord must be served with a copy of 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.

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: May 10, 2017

---

Residential Tenancy Branch