



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Code MNR, MND, MNSD, FF

Introduction

This hearing was convened in response to applications by the landlord and the tenant.

The landlord's application is seeking orders as follows:

1. For a monetary order for unpaid rent;
2. For a monetary order for money owed or compensation for damages;
3. To keep all or part of the security deposit; and
4. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. For a monetary order for money owed or compensation for damages;
2. Return all or part of the security deposit; and
3. To recover the cost of filing the application.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

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

Is the landlord entitled to monetary compensation for damages?

Is either party entitled to the security deposit?

Is the tenant entitled to a monetary order for compensation for loss?

Background and Evidence

The tenancy began on October 15, 2015. Rent in the amount of \$900.00 was payable on the 15th of each month. A security deposit of \$450.00 was paid by the tenant. The tenancy ended on February 1, 2017.

The parties agreed a move-in and move-out condition inspection report was completed.

The landlord claims as follows:

a.	Unpaid rent for February 2017	\$450.00
b.	Unpaid utilities	\$225.00
c.	Broken bidet sprayer	\$ 78.00
d.	Filing fee	\$100.00
	Total claimed	\$853.00

Unpaid rent

The landlord testified that the rental period is from the 15th to the 14th of each month. The landlord stated that the tenant only paid from January 15, 2017 to February 1, 2017; however, they are not entitled to a prorated rent when they end the tenancy part way through the rental period. The landlord seeks to recover unpaid rent in the amount of \$450.00.

The tenant testified that they gave the landlord notice to end the tenancy on December 15, 2016, to end the tenancy on February 1, 2017.

Unpaid utilities

The landlord testified that after the fixed term expired they agreed to allow the tenant to remain in the premises; however, the tenant agreed that they would pay 1/3 of the hydro and gas. The landlord stated that the tenant only paid \$70.00 towards these utilities. The landlord seeks to recover unpaid utilities in the amount of \$225.00.

The tenant testified that when the tenancy reverted to a month-to-month the landlord said that they have to pay utilities. The tenant stated that they did not agree to this, as the utilities were included in the rent. The tenant stated that they gave the landlord \$70.00, the last month of their tenancy to ensure the services were not disconnected.

Broken bidet attachment

The landlord testified that the bidet sprayer was only a year old at the start of the tenancy and had to be replaced. The landlord stated that the tenant was neglectful as they were not shutting the valve off as instructed. The landlord stated that this put too

much pressure on the sprayer causing damage to the seals. The landlord seeks to recover the amount of \$78.00.

The tenant testified that the bidet sprayer was leaking during the tenancy and that they informed the landlord of the problem. The tenant stated that they were not neglectful and they did turn the valve off properly.

The tenant's application

The tenant claims as follows

a.	Return of security deposit	\$450.00
b.	Repayment of utilities	\$ 70.00
c.	Filing fee	\$100.00
	Total claimed	\$620.00

Return of security deposit

The tenant testified that they sent the landlord a letter February 5, 2017, by registered mail requesting the return of the security deposit. Filed in evidence is a copy of the letter.

The landlord testified that the tenant did not state in the letter that the address at the bottom of the page was their forwarding address; it was just an address of a real estate company. The landlord stated that in the letter the tenant wanted them to phone them so they could attend and pick up the cheque.

The landlord testified that they phoned and text the tenant several times to clarify the address and the tenant did not respond.

Repayment of utilities

The tenant testified that they should be entitled to the return of the utilities that they paid, as they were included in the rent. The tenant seeks to recover the amount of \$70.00.

The landlord testified that the tenant agreed to pay utilities.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard,

that is, a balance of probabilities. In this case, both parties have the burden of proof to prove their claim.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Landlord's application.

Unpaid rent

Section 26 of the Residential Tenancy Act states:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Although I accept the tenant gave notice to end tenancy on December 15, 2016, with an effective date of February 1, 2017; however, as rent is due on the 15th of each month, the tenant was required to pay the full rent. Ending the tenancy earlier does not give the tenant the right to pay prorated rent. I find the tenant breach the Act when they failed to pay rent that was due under the tenancy agreement and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover unpaid rent in the amount of **\$450.00**.

Unpaid utilities

In this case, both parties have provided a different version on the issue of utilities. The evidence of the landlord was that the tenant agreed when the tenancy went to a month-to-month to pay for these utilities. The evidence of the tenant was they did not agree, as the utilities were included in rent and only paid a portion, as they were worried that the services would be disconnected.

In this case, the original tenancy agreement included the utilities in the rent, I find without further evidence of the landlord that they have not met the burden of proof to prove the tenant agreed to pay for these utilities, such as a new signed tenancy agreement. Therefore, I dismiss this portion of the claim.

Broken Bidet sprayer

In this case, both parties provided a different version of events. The evidence of the tenant was that bidet sprayer was leaking during the tenancy and that they notified that landlord. The evidence of the landlord was the tenant did not turn the valve off leaving the sprayer under pressure causing damage. Both versions are probable; however, the bidet sprayer was three years old at the end of the tenancy and it is just as likely that the sprayer broke due to reasonable wear and tear and the aging process. I find the landlord has not met the burden of proof. Therefore, I dismiss this portion of their claim.

I find that the landlord has established a total monetary claim of **\$550.00** comprised of the above described amount and the \$100.00 fee paid for this application.

Tenant's application

Return of Security Deposit

I accept the tenant sent a letter to the landlord on February 5, 2017, asking for the return of the security deposit. However, the tenant did not inform the landlord in the letter that the address of the real estate company was to be used as their forwarding address for service or for the return of the security deposit. The letter stated that the landlord could contact the tenant and they would pick up the security deposit.

I am not satisfied that the letter provided sufficient details that this was the tenant's forwarding address for service. I find the tenant's application for the return of the security deposit was premature. Having made that finding, the security deposit will be decided upon at the conclusion of this hearing.

Repayment of utilities

As I have previously found that the landlord has not met the burden of proof that the tenant agreed to pay for utilities. I find the tenant is entitled to recover the one payment they made to the landlord in the amount of **\$70.00**.

I find that the tenant has established a total monetary claim of **\$170.00** comprised of the above described amount and the \$100.00 fee paid for this application.

Conclusion

Since both parties have established a monetary claim, I find it appropriate to offset those amounts. The tenant's monetary award of \$170.00 will be deducted from the landlord's monetary award of \$550.00, leaving a balance owed by the tenant of \$380.00.

I order that the landlord retain the amount of \$380.00 from the tenant's security deposit in full satisfaction of the claim and I grant the tenant an order under section 67 for the balance due of **\$70.00**. This order may be filed in the Provincial Court (Small Claims) 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 23, 2017

Residential Tenancy Branch