



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC MNSD OLC FF

Introduction:

Both parties attended the hearing and gave sworn testimony. Each confirmed receipt of each other's Application for Dispute Resolution by registered mail. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 7, 46 and 67 for unpaid rent and utilities and damages to the property;
- b) An Order to retain part of the security deposit pursuant to Section 38; and
- c) An order to recover the filing fee pursuant to Section 72.

The tenant applies pursuant to the Act for orders as follows:

- d) For a return of twice the security deposit pursuant to section 38

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that the tenant owes rent and utilities and damaged to the property, that it was beyond reasonable wear and tear and the amount it cost to fix the damage? If so, what is the amount of the compensation and is the landlord entitled to recover filing fees also?

Is the tenant entitled to twice the security deposit refunded?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced in November 1, 2016, that rent was \$1550 a month plus \$85 for utilities and a security deposit of \$775 was paid. The tenant vacated on February 1, 2017 pursuant to a mutual agreement to end tenancy and the landlord has refunded him \$285.93 of his security deposit. The landlord claims as follows:

- \$45 for unpaid rent Nov. 2016
- \$75 for a missing garage remote. The tenant said he was never given one
- \$100 for suite cleaning. The tenant said he cleaned the unit
- \$386.40 for unpaid utilities of hydro and gas. The tenant denies owing this amount but agrees he signed an addendum to pay 50% of the utilities.

The tenant said this was a problematic tenancy and the landlord had agreed that certain work he performed could be deducted from rent owed. He contends the last hydro bill is too high and he should not be responsible for 50% of that. He states he paid the \$85 monthly but has provided no receipts or other documents to show this. The landlord said he paid only one payment of \$85 in November 2016 for utilities.

In evidence are handwritten calculations of the landlord showing the amounts owed, the utility bills, her bank accounts showing rent deposits, photographs, the tenancy agreement and the Mutual Agreement to End Tenancy. The parties agreed there was no condition inspection report done at move-in or move-out.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

Monetary Order

I find that there are rental arrears in the amount of \$45 from November 2016 as illustrated by the ledger and bank statements of the landlord.

Regarding utilities, I find the lease addendum states the tenant agrees to pay 50% of the monthly utilities of gas and hydro by paying an annualized amount of \$85 a month. At the end of the lease, the tenants agree to pay the difference in utilities if the yearly total exceeds the monthly payments of \$85. The landlord said the tenant only paid one \$85 payment as illustrated through her monthly bank deposits. The tenant said he paid \$85 every month but is unable to provide receipts or bank transfers to prove this. In checking the landlord's claim, I examined the original bills enclosed in evidence. I find the gas bills were \$73.03 (Nov.30, 2016) \$115.35 (January 31, 2017). The hydro bills were \$328.88 (Nov. 2016) and \$413.25 (Feb. 21, 2017); hydro is billed on a two month cycle. Total owing for utility bills then is \$188.38 for gas and \$742.13 for a total of \$930.51 for the 3 months of tenancy. Based on the lease addendum, I find the tenant is responsible for half of this amount or \$465.25. The weight of the evidence is that he paid only \$85 of this which leaves a total owing of \$380.25. This is approximately \$6 less than the landlord claimed for unpaid utilities. However, I prefer to rely on the

calculations from the actual bills in evidence so I find the landlord entitled to compensation of \$380.25 for unpaid utilities. In the hearing, the tenant submitted that some of the bills had unpaid amounts from a previous bill added. However, on re-examining the bills, I find the amounts from each previous bill are noted as paid.

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 67 of the Act does *not* give the director the authority to order a respondent to pay compensation to the applicant if damage or loss is not the result of the respondent's non-compliance with the Act, the regulations or a tenancy agreement.

The onus is on the landlord to prove on the balance of probabilities that there is damage caused by this tenant, that it is beyond reasonable wear and tear and the cost to cure the damage. I find insufficient evidence that the tenant left the unit dirty. Although the landlord said she did a walk through with friends, I find no evidence of a move-in or move-out report so I find insufficient evidence that any dirt or garbage was caused by the tenant. I also find insufficient evidence that the tenant received a remote control for the garage. There was a lease and addendum and this was not noted and the tenant denied receiving any remote. I find the landlord not entitled to compensation for cleaning or for the remote replacement due to insufficient evidence to support her claim.

The onus is on the applicant to prove on a balance of probabilities their claim. The tenant has the onus of proving entitlement to return of double the security deposit of \$775. I find the lease ended on February 1, 2017 and he forwarded his address soon after according to the landlord. I find the landlord filed her Application on February 7, 2017 which is well within the 15 days allowed by section 38 of the Act. Therefore I find the tenant not entitled to the refund of double the security deposit. The security deposit remains in trust until dealt with in this hearing.

Although the tenant claims he was to deduct money for repairs and a washing machine from his rent, I find the landlord accounted for this by deducting \$331.75 from the December rent owed.

I find the landlord refunded \$285.93 of the security deposit and the tenant cashed the cheque. I find he would be entitled to any balance after calculating the landlord's claim.

Conclusion:

I find the landlord is entitled to a monetary order as calculated below and to recover her filing fees for this application. I dismiss the application of the tenant. No filing fee was paid by him so none is awarded.

Calculation of Monetary Award:

Rent owed November 2016	45.00
Gas and Electric utilities owed as calculated above	380.25
Filing fee	100.00
Less balance of security deposit in trust after refund calculated below	-489.07
Total Monetary Order to Landlord	36.18

Tenant's security deposit	775.00
Amount returned to tenant	-285.93
Balance in trust	489.07 to be deducted from amounts owed

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: July 18, 2017

Residential Tenancy Branch