



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNR MNSD MNDC RR OLC CNL OPL FF

### **Introduction:**

Both parties made Applications and both attended the hearing and gave sworn testimony. Both agreed that the landlord served his Application by registered mail. The tenant served his by regular mail on the landlord but the landlord agreed he received it but not by registered mail as the tenant first stated. The tenant acknowledged his mistake. Pursuant to my authority under section 71(2) of the Act, I find the documents were sufficiently served for the purposes of this hearing. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To obtain a monetary order for unpaid utilities and rent pursuant to section 46 of the Act;
- b) To recover the filing fee for this application.

This hearing also dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- c) To cancel a notice to end tenancy for landlord's use of the property pursuant to section 49;
- d) To obtain a Monetary Order for the refund of his security deposit and for other compensation due to lack of repair;
- e) To have repairs done to the property; and
- f) To recover his filing fee.

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

Has the landlord proved on a balance of probabilities that he is entitled to compensation for unpaid utilities and rent and to recover the filing fee?

Has the tenant proved there was a two month Notice to End Tenancy? Has he proved that his security deposit should be refunded and he is entitled to other compensation and to recover the filing fee?

### **Background and Evidence**

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced September 2015 on a fixed term lease expiring February 29, 2017. Subsequent one month fixed term one month leases were signed by the parties for March and April 2017 with expiry April 30, 2017. The last two fixed terms state in clause 1 of the lease that at the end of the fixed term, the tenancy ends and the tenant must provide the landlord with vacant possession. The tenant contended he was confused as the September 2015 lease provided in clause 1 that vacant possession must be provided OR (ii) upon mutual agreement of both the Tenant and the Landlord, the tenancy may continue on a month to month basis. No mutual agreement was made. Rent was \$1650 a month and a security deposit of \$825 was paid.

The landlord relies on the lease terms and required vacant possession on April 30, 2017. The tenant said the landlord had emailed earlier and said he intended to take the property for his own use so he thought section 49 of the Act applied and he would be given Notice and a free month's rent. The tenant said he vacated on April 30, 2017 but the landlord provided emails from him dated May 1, 2017 which indicated he still had not moved all his belongings. The landlord claims one day's rent in the amount of \$52.53 for over-holding.

The landlord also claims compensation for utility bills from the municipality for water, sewer and garbage. The tenant agrees that the lease provides he is to pay utilities but said the garbage fee was not included in the listed utilities in the lease. The total utility bills are \$433.90 for services from November 15, 2016 to March 7, 2017 and \$135.53 for services from March 8 to May 1, 2017. The total of the garbage fee in the bills is \$23.59.

The tenant claims in his application that he provided a forwarding address to the landlord together with the keys that he left in the mailbox on May 1, 2017. The landlord said he did not receive his forwarding address until the tenant sent his application for dispute resolution to him.

The tenant claims a rent refund or compensation for a broken dryer for one month (April 2017). He said he had to go to the laundromat 3 times and spent \$32 in total plus about 1 1/2 hours each time. He asks for compensation for his time and money spent. The landlord said he offered \$20 for the laundromat but his repair person was not available to fix the dryer in April 2017.

In evidence are copies of the utility bills and emails, the lease agreements, photographs and statements of the parties. On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

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**Analysis:**

The onus is on the landlord in his application to prove on a balance of probabilities that the tenant owes one day of rent and utility bills as claimed. I find the evidence of the landlord credible and I prefer it to the evidence of the tenant in respect to the tenant vacating on May 1, 2017, thus over-holding for one day. The landlord's testimony is well supported by copies of emails from the tenant showing he was still moving out items on May 1, 2017. I find the landlord entitled to recover one day of rent \$52.23 as claimed.

I find the landlord also entitled to recover utility payments as provided in the lease. I find these are in the name of the landlord and run with the property so the landlord is entitled to be compensated for them. However, I find payment for garbage was not included in the lease so this will be deducted from the amounts owed by the tenant. I find the landlord entitled to recover \$410.31 for the first utility payment (\$433.90-\$23.59(garbage) and \$135.53 for the second (no garbage charge on it.). The total of the utility repayment to the landlord is \$545.84.

In regard to the tenant's Application, I find they had a fixed term lease with vacant possession at the end of the term. I find there was no mutual agreement to continue the tenancy on a month to month basis and this is evidenced by the fact that the landlord required all fixed term tenancy agreements, even for one month. Therefore, I find that no Notice to End Tenancy was required to be served to the tenant as the tenancy ended at the end of the fixed term. Although the tenant alleged the landlord sent an email regarding wanting the property for his own use, I find this was not a section 49 Notice to End Tenancy which must be served on the legal form according to section 52 of the Act. Therefore, I find the tenant not entitled to compensation of a month's free rent since this is triggered by a section 49 Notice.

I find the landlord, however, did not fix the dryer in the unit and the tenant was without a dryer for the month of April 2017. I find the tenant's evidence credible that he had to spend about four and a half hours plus \$32 on using a laundromat. Although he would spend time doing the laundry even in the dryer in his home, I note that he would not have to travel and sit and wait in another location but could do his work while waiting.

I find it reasonable to compensate the tenant for his wasted time in the amount of \$67.50 (\$15 hr x 4.5 hours) plus \$32 for his costs for a total award of \$99.50.

I find the tenant premature in applying for his security deposit as I find insufficient evidence that the landlord received his forwarding address in writing as section 38 of the Act requires. His security deposit will be applied to offset the amount owed to the landlord.

**Conclusion:**

I find the parties entitled to compensation as calculated below. I find them both entitled to recover filing fees as both applications had merit. I find the landlord entitled to retain a portion

of the security deposit to offset the amount owing. The balance is a monetary order in favour of the tenant as calculated.

<b>Landlord –over-holding rent</b>	52.53
Recovery of utility bills allowance	545.84
Filing fee	100.00
<b>Total to Landlord</b>	698.37
<b>Tenant Account</b>	
Tenant compensation- no dryer April	99.50
Tenant filing fee	100.00
Less security deposit	825.00
<b>Total tenant account</b>	1024.50

	Tenant Account	1024.50
	Less amount to landlord	-698.37
	<b>Total Monetary Order in favour of tenant</b>	326.13

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 03, 2017

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Residential Tenancy Branch