



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute codes      MND MNDC MNSD FF / MNSD FF

### Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- a monetary order for compensation for loss or damage 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 the filing fee for this application from the tenant pursuant to section 72.

Tenant:

- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were provided an opportunity to provide affirmed testimony and present evidence and submissions.

This decision should be read in conjunction with the Interim Decision dated January 21, 2019. In summary, in the Interim Decision I made a finding that S.I. is the sole tenant who has legal standing in this dispute and that J.P. was only an occupant with no rights or obligations under this tenancy agreement. The applications of both parties have been amended to reflect only S.I. as the legal tenant.

### Preliminary Issue: Submitting Evidence

Under Rule 3 of the Residential Tenancy Branch (the “Branch”) Rules of Procedure (the “Rules”), a party submitting evidence must ensure the following:

- Evidence is organized, clear and legible (For example, photographs must be described in the same way, in the same order, such as: “Living room photo 1 and Living room photo 2”).

The landlord submitted approximately 80 pictures as evidence none of which were organized or labelled in any meaningful manner.

At the outset of the hearing, I advised the landlord that I would not be considering the landlord’s picture evidence in the making of this decision. The landlord was provided the option of withdrawing her application and reapplying so she could submit evidence in accordance with Rules; however, the landlord declined and wished to proceed with the hearing. The landlord chose to proceed and present evidence only in relation to her claim for unpaid utilities.

### Issues

Is the landlord entitled to a monetary order for loss?

Is the landlord entitled to retain all or a portion of the security deposit?

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

Is the tenant entitled to a return of all or a portion of the security deposit, including double the amount?

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

### Background and Evidence

There were two separate tenancy agreements provided on file. The first agreement was for a tenancy which began September 1, 2015 and it named only J.P. (formally J.B.) as the tenant. The second agreement was for a tenancy beginning September 1, 2017 and named only S.I. as the tenant. Both J.P. and S.I. continued to reside in the rental unit after the second agreement was entered into. A security deposit of \$1500.00 was also provided at the start of the first agreement which carried over to the second agreement. The monthly rent during the first agreement was \$3000.00. The monthly

rent for the second agreement was \$3300.00. The tenancy ended on August 31, 2018. A written forwarding address was not provided by the tenant. The tenant only provided a forwarding address by text message on August 29, 2018.

The landlord is claiming \$2189.45 in unpaid utilities. The landlord submits that the tenancy agreement does not include water and the tenant was responsible to pay the city water bill. The landlord submits that the water bills were going to the rental unit and the tenant did not pay the bills nor did she forward them to the landlord. The landlord only got the bills after the tenant vacated. The water bill is in the landlord's name. The landlord submitted copies of the bills for the amount claimed which covers the period of September 2017 to August 2018. The landlord acknowledged that the water bill for the period from the previous tenancy agreement with J.P. was paid by the landlord. The landlord submits that the previous bills were provided to the landlord and paid for by the landlord. The landlord submits that water was not previously on a meter; therefore, the tenants were not responsible for the bill. Beginning in 2017, the water was switched to meter. The landlord submits that the parties discussed at the time of the new agreement that the tenant was to pay the water bill.

The occupant J.P. testified on behalf of the tenant and submits that she was present during the signing of the new tenancy agreement. J.P. testified that nothing was mentioned with respect to the water bill. J.P. testified that the only thing discussed was the landlord increasing the rent to \$3300.00. J.P. testified that the landlord advised that everything else would continue as is. J.P. testified that if they knew they were also going to be responsible for the water bill they would not have agreed to such a rent increase.

The tenant is claiming double the security deposit arguing that the landlord failed to return the security deposit within 15 days of the date the landlord received the tenant's forwarding address in writing.

### Analysis

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement.

Even though the tenancy agreement does not include water as being included, on a balance of probabilities I find that water was included and the tenant is not responsible to pay the amount claimed by the landlord. I make this finding for the following reasons:

- The first tenancy agreement also did not include water as a service or facility included in the rent; however, the evidence was that the landlord paid the water bill for this tenancy.
- While the first agreement at least checked off appliance, window coverings and garbage collection as being included, the second agreement did not have anything checked off under this section of the agreement even though these services were still provided. I find the landlord cannot therefore rely on the second tenancy agreement as being an accurate reflection of the services included with the rent.
- I find it unreasonable that the landlord permitted the water bill to remain unpaid for the entire year with no communication to the tenant in regards to paying any arrears.
- The bill is not addressed to the rental unit as alleged by the landlord but rather contains the address of the landlord.
- I find there is insufficient evidence that the landlord had a discussion with the tenant at the time of signing the agreement in regards to the water bill.
- I accept the argument of J.P. that they would not likely have agreed to a rent increase of \$300.00 had the landlord also wanted them to start paying the water bill.
- I find that it is more likely than not that the second agreement carried on the same terms as the first agreement with the exception of the rent increase. The tenant was not responsible for the water bill during the first agreement.

The landlord's application is dismissed in its entirety without leave to reapply.

As the landlord was not successful in this application, I find that the landlord is not entitled to recover the filing fee paid for this application from the tenant.

Section 38 of the Act provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later.

Section 88 of the Act sets out how documents may be served. Text and/or e-mail message is not an acceptable method of service pursuant to section 88 of the Act. As the tenant provided a forwarding address by text message, the tenant has not provided

the landlord with a forwarding address in writing as required under the Act. As such, I dismiss the tenant's application for double the security deposit.

As the landlord's application to retain the tenant's security deposit is dismissed, I find the landlord is obligated to return the tenant's security deposit in the full amount of \$1500.00.

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for this application from the landlord for a total monetary award of \$1600.00.

### Conclusion

The landlord's application is dismissed without leave to reapply.

The tenant is entitled to a return of the \$1500.00 security deposit plus the \$100.00 filing fee.

Pursuant to section 67 of the *Act*, I grant the tenant a Monetary Order in the amount of \$1600.00. 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 4, 2019

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Residential Tenancy Branch