



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

On July 26, 2019, the Landlord submitted an Application for Dispute Resolution for a monetary order for damage to the unit; for a monetary order for unpaid rent; for money owed or compensation for damage or loss; to keep the security deposit; and to recover the cost of the filing fee.

The matter was scheduled as a teleconference hearing. The Landlord and Tenant attended the hearing.

The parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The original hearing was scheduled for one hour; however, it continued for 75 minutes and was insufficient time for the parties to provide their testimony. The hearing was adjourned and was rescheduled. Both parties attended the adjourned hearing.

The Landlord provided the dispute address as the Landlord's address for service of documents; however, the Landlord stated he is not living at that address and did not receive any of the Tenants documents. The parties agreed at the original hearing that the Tenants would provide a copy of their documentary evidence to the Landlord within

seven days of the original hearing. At the reconvened hearing neither party raised a concern regarding the exchange of the documentary evidence.

Issues to be Decided

- Is the Landlord entitled to compensation for damage to the unit?
- Is the Landlord entitled to a monetary order for unpaid rent?
- Is the Landlord entitled to keep the security deposit in partial satisfaction of her claims?

Background and Evidence

The Landlord and Tenant testified that the tenancy began on February 7, 2018 as a one-year fixed term tenancy that continued thereafter on a month to month basis. The Tenant was to pay the Landlord monthly rent in the amount of \$1,900.00. The Tenant paid the Landlord a security deposit of \$950.00.

The Landlord testified that the Tenant moved out of the rental unit on July 1, 2019.

The Landlord is seeking compensation for the following items:

Rent for February 2018	\$542.86
Gas and Hydro Utility Bills	\$725.66
Fridge Removal	\$50.00
Junk Removal	\$200.00
Damage and Cleaning Costs	\$600.00
Gutter Repair	\$100.00
Garden Restoration	\$2,000.00

Rent for February 2018

The Landlord is seeking compensation for eight days of unpaid rent. The Landlord testified that the tenancy was to begin on February 15, 2018; however, the Landlord testified that she discovered that the Tenant moved into the rental unit on February 7, 2018. The Landlord testified that she served the Tenant with a letter in March 2018 demanding payment of \$542.86 but the Tenant never paid the amount. The Landlord provided a copy of the letter dated March 29, 2018.

In reply, the Tenant testified that he moved into the rental unit on February 10, 2018 and that the Landlord told him he could move into the rental unit early. The Tenant provided

a copy of a text message received from the Landlord that indicates the Tenant moved into the unit 5 days early which would cost an extra \$350 but the Landlord prefers a good relationship and never asked for that.

Unpaid Gas and Hydro Bills

The parties testified that the tenancy agreement requires the Tenant to pay 50% of the hydro and gas costs. The Landlord is seeking to recover compensation for Gas and Hydro utility costs.

The Landlords monetary claims for unpaid utilities were not clear because combined the amounts without providing a breakdown of each claim. During the hearing the Landlord broke down her first claim for \$848.08 as follows: Rent is \$542.86; Hydro is \$75.80; and Gas is \$229.41. The reminder of her claims for utilities needed to be separated by type of utility and the claims needed to be explained by the Landlord.

The Landlord explained that for the month of February 2018 the Landlord is seeking the full amount of the utility bills because there was nobody living in the rental unit located above the Tenant. For the remainder of the claims the Landlord is seeking 50% of the bill amounts. The Landlord also explained that she determined the daily rate of costs by dividing the amount of the bill by the number of days in the billing period and multiplying the daily rate by the number of days the Tenant lived in the rental unit.

The Landlord provided the following utility bills:

<u>Utility</u>	<u>Bill Date</u>	<u>Billing Period</u>	<u>Amount</u>	<u>Amount of Claim</u>
Hydro	March 5, 2018	Jan 20 - Feb 28	\$75.80	\$75.80 (21 days)
Hydro	March 25 2019	Jan 22 - March 21	\$238.38	\$238.38 /2 = \$119.19
Hydro	June 6 2019	May 23 - June 4	\$194.93	\$194.93 /2 = \$97.46
Gas	February 20 2018	Jan 22 - Feb 20	\$181.03	\$229.41 (21 days)
Gas	March 6, 2019	Feb 20 - Feb 28	\$214.67	\$214.67 /2 = \$107.33
Gas	April 23 2019	March 21 - April 21	\$158.24	\$158.24 /2 = \$79.12
Gas	June 5, 2019	May 22 - June 3	\$34.71	\$34.71 /2 = \$17.35
			Total	\$725.66

The Landlord was provided an opportunity to explain why she is seeking compensation in the amount of \$229.41 for the gas utility for February 2018 when the bill provided is for less. After providing the Landlord a couple of occasions to explain her claim, she was unable to explain why she is seeking \$229.41. The Tenant provided no response

to this claim because the Landlord was not able to clarify the amount of the February 2018 gas claim.

The Landlord testified that the Tenant refused to pay the utility costs because another Tenant who lived in the unit upstairs had a newborn and the Tenant did not feel it was fair.

In reply the Tenant testified that he wants to pay what he owes; however, the Landlord charged him too much. The Tenant referred to his documentary evidence for May 2018 utilities.

The Tenant testified that he had an issue with the Tenant living above because they had a child and the hydro usage went from three people to four people. The Tenant testified that he told the Landlord that it was not fair, and he was not going to pay utilities.

The Tenant testified that he withdrew cash from the bank in May 2019 and paid \$360.00 to the Landlord. The Tenant referred to a receipt dated May 1, 2019 in his documentary evidence that indicates Nadia received \$360.00. The Tenant provided a copy of a text message received from the Landlord on June 3, that states *"I got an emergency call that you did not pay \$360 for month and a half utilities. This means I need to stop the electricity and gas immediately if you do not pay tonight."*

The Tenant testified that on March 22, 2019, he paid the Landlord the amount of \$100.00 by cheque for February hydro costs. The Tenant did not have documentary evidence to support his testimony on this payment.

The Landlord replied that she never received a cheque from the Tenant for \$100.00 for February 2018 hydro costs. The Landlord testified that she definitely did not receive a \$360.00 cash payment from the Tenant.

Fridge Removal

The Landlord testified that the Tenant agreed to pay for the removal cost of the Tenants refrigerator. The Landlord testified that she paid \$50.00 to have the refrigerator removed. The Landlord did not provide a receipt or invoice to the cost of removal.

In reply, the Tenant testified that the Landlord did not have his permission to remove and dispose of his refrigerator. The Tenant testified that the Landlord did not pay a fee to have the refrigerator removed.

Junk Removal

The Landlord testified that the Tenant left items behind on the property when he moved out. The Landlord hired a handyman to remove and dispose of the Tenants garbage. The Landlord testified that she paid a handyman \$200.00 for the removal and disposal of the garbage. The Landlord did not provide an invoice, receipt or other proof of payment. The Landlord provided photographs of items left behind on the property when the Tenant moved out.

In response to the Landlords claim the Tenant testified that he never left items behind at the rental unit. The Tenant testified that the Landlords photographs were taken before he vacated the rental property. The Tenant testified that the Landlords photographs are not date and time stamped.

Damage and Cleaning Costs

The Landlord testified that the Tenant is responsible for damaging walls of the rental unit using wall anchors. The Landlord provided photographs of walls with wall anchors. The Landlord also testified that the Tenant melted an item onto a tile located in the bathroom tub/shower area. The Landlord provided a photograph of the bathroom tile. The Landlord is seeking compensation of \$600.00 for painting and repair costs. The Landlord did not provide an invoice or receipt for materials or the repair costs.

In reply, the Tenant testified that the Landlord failed to conduct a move in condition inspection of the rental unit and failed to conduct a move out condition inspection.

The Landlord provided testimony confirming that she did not conduct a move in or move out inspection.

Gutter Repair

The Landlord is seeking compensation in the amount of \$100.00 for damage to a gutter down pipe. The Landlord testified that the gutter pipe is dented and needed to be repaired. The Landlord provided a photograph of a gutter pipe. The Landlord did not provide a copy of an invoice or receipt for the cost to repair the gutter pipe.

In reply, the Tenant testified that he is not responsible for any damage to a gutter pipe. The Tenant testified that the Landlords photograph is old and was taken in 2018.

Garden Restoration

The Landlord testified that the yard was left overgrown when the Tenant vacated the rental property. The Landlord testified that the Landlord had to re-soil and re-seed the grass in July 2019. The Landlord provided photographs that were taken close to the end of the tenancy. The Landlord is seeking compensation of \$2,000.00. The Landlord did not provide a receipt or invoice for materials or costs to repair the yard.

In reply, the Tenant testified that the Landlord is not being truthful. The Tenant confirmed that the items in the Landlords photographs are his items; however, the photographs were taken on the first day of the tenancy. The tenant testified that the side yard was overgrown at the start of the tenancy.

Security Deposit

The Landlord is seeking to keep the security deposit of \$950.00 in partial satisfaction of her claims.

Analysis

The Residential Tenancy Policy Guideline #1 Landlord & Tenant – Responsibility for Residential Premises states:

a tenant is generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest.

When a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove the claim, the Applicant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act, Regulation or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss; and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Residential Tenancy Branch Policy Guideline # 16 states the following with respect to types of damages that may be awarded to parties:

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

“Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

A party seeking compensation should present compelling evidence of the value of the damage or loss in question.

Sections 23 and 35 of the Act provides that a Landlord and Tenant together must inspect the condition of the rental unit on the day the Tenant is entitled to possession of the rental unit, and at the end of the tenancy before a new tenant begins to occupy the rental unit. Each section also requires that the Landlord complete the condition inspection report; both the Landlord and Tenant must sign the condition inspection report and the Landlord must give the Tenant a copy of that report in accordance with the regulations.

Section 24 (2) of the Act provides that the right of the Landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the Landlord having does not offer the Tenant opportunities for an inspection and complete an inspection report in accordance with the regulations.

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

February 2018 Rent

The parties are not in agreement on the date the Tenant moved into the rental unit. The Landlord indicates she found out that Tenant moved into the unit on February 7, 2018 is seeking rent starting February 7, 2018. The Tenant testified that he moved in on February 10, 2018. The tenancy agreement provided by the Landlord indicates the tenancy begins on February 15, 2018. The Tenant testified that the Landlord allowed him to move in early and provided a copy of a text message received from the Landlord that indicates the Tenant moved into the unit 5 days early which would cost an extra \$350 but the Landlord prefers a good relationship and never asked for that.

I find that it is more likely than not that the Landlord permitted the Tenant to move into the rental unit early without condition. I find that the tenant moved into the rental unit on February 10, 2018. I find that there was no agreement by the parties that the Tenant would pay the Landlord compensation for moving in early.

The Landlords claim for compensation for 8 days of rent is dismissed.

Unpaid Utility Bills

I find that the tenancy agreement requires the Tenant to pay 50% of the hydro and gas costs at the rental unit.

I find that the Landlord is not entitled to recover 100% of the cost of the utilities for the month of February 2018 when the upper unit was vacant. The tenancy agreement does not contain a term stating that the tenant is responsible for 100% of the costs of Hydro and Gas on occasions that the upper unit is vacant. I find that the Tenant is only responsible for 50% of Hydro and Gas costs as of February 10, 2018.

The Landlords claim for an unpaid gas bill from February 2018 is dismissed. The Landlord was given an opportunity to explain the claim and could not explain how she determined the amount of the claim. The Landlord was unable to determine the value of the loss.

I do not accept the Tenant's evidence that in May 2019 he paid the Landlord \$360.00 towards utility costs. I find that the Tenants testimony that he paid an amount to the Landlord is confirmation that he owed the Landlord money for utilities. However; the Landlords text message asking for \$360.00 is dated June 3. The Tenant provided a document he says is a receipt dated May 1, 2019 which indicates the Landlord received \$360.00. Upon review of the signature on the receipt, I find that it does not match the Landlords signature on any other documents, including rent receipts and the tenancy agreement provided by the Landlord and Tenant. I find that it is very odd that the Tenant is stating he paid the Landlord \$360.00 a month prior to the Landlord sending a text requesting that amount. I find that the Tenants evidence of a receipt in the amount of \$360.00 is not reliable evidence and I give it no weight.

In addition, the Tenants submission that he paid the Landlord \$100.00 in March 2019 was refuted by the Landlord. The Tenant did not provide any documentary evidence to support his testimony.

I am also mindful that the Tenant testified that he had an issue with paying utilities because the Tenants living above him had a newborn. The Tenant testified that he was not going to pay the utility costs.

After considering the testimony and evidence before me I award the Landlord the following amounts for unpaid Hydro and Gas charges:

<u>Utility</u>	<u>Bill Date</u>	<u>Billing Period</u>	<u>Amount</u>	<u>Amount awarded</u>
Hydro	March 5, 2018	Jan 20 - Feb 28	\$75.80	\$34.02
Hydro	March 25 2019	Jan 22 - March 21	\$238.38	\$119.19
Hydro	June 6 2019	May 23 - June 4	\$194.93	\$97.46
Gas	February 20 2018	Jan 22 - Feb 20	\$181.03	dismissed
Gas	March 6, 2019	Feb 20 - Feb 28	\$214.67	\$107.33
Gas	April 23 2019	March 21 - April 21	\$158.24	\$79.12
Gas	June 5, 2019	May 22 - June 3	\$34.71	\$17.35
			Total	\$454.47

Fridge Removal; Garbage Removal; Wall Damage and Cleaning; Gutter Repair and Garden Restoration

The Landlords request for compensation for these claims is dismissed for the following reasons:

To prove a claim, the Applicant must on a balance of probabilities provide:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act, Regulation or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss;

An applicant should present compelling evidence of the value of the damage or loss in question.

I find that the Landlord failed to perform a move in inspection and move out inspection in accordance with the Act and Regulations. I find that the Landlords right to make a claim against the security deposit for damage is extinguished in accordance with section 24(2) of the Act.

A properly completed condition inspection report is proof of the state of repair and condition of a rental unit at the start and end of a tenancy. Since the Landlord failed to complete an inspection and complete a report, the Landlord does not have sufficient

evidence to prove that damage or loss exists due to actions or neglect of the Tenant by comparing the condition of the rental unit at the start and the end of the tenancy.

Furthermore, the remainder of the Landlord's claims fail because she did not provide sufficient proof of the amount required to compensate her for the claimed loss. The Landlord did not provide any invoices or receipts for any of her remaining claims.

The Landlords remaining claims are dismissed without leave to reapply.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was partially successful with her claims, I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

The Landlord has established a monetary claim in the amount of \$554.47. I authorize the Landlord to retain the amount of \$554.47 from the security deposit of \$950.00. I order the Landlord to repay the amount of \$395.53 to the Tenant.

I grant the Tenant a monetary order in the amount of \$395.53. For enforcement, the monetary order must be served on the Landlord and may be enforced in the Provincial Court.

Conclusion

I find that the Tenant was required under the tenancy agreement to pay 50% of the hydro and gas costs. I find that the Tenant owes the Landlord the amount of \$454.47 for unpaid hydro and gas costs and owes an additional \$100.00 for the cost of the filing fee.

The remainder of the Landlords other monetary claims were not successful and are dismissed without leave to reapply.

I authorize the Landlord to retain the amount of \$554.47 from the security deposit of \$950.00. I order the Landlord to repay the balance of \$395.53 to the Tenant.

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: February 12, 2020

Residential Tenancy Branch