



# 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 landlords and the tenant.

The landlords' application filed on December 22, 2019 is seeking orders as follows:

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

The tenant's application filed on January 1, 2020 is seeking orders as follows:

1. For a monetary order for money owed or loss; and
2. To recover the cost of the filing the application.

The tenant filed an amended application filed on January 30, 2020 is seeking orders as follows;

3. For a monetary order for money owed due to overpayment of rent; and
4. For the return all or part of the security deposit.

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, I refer only to the relevant facts and issues in this decision.

### Preliminary and Procedural Issues

I have amended the style of cause to reflect the proper name of the tenant.

The landlords submit that the tenant's application for dispute resolution was not served within three days as required by the Residential Tenancy Branch Rules of Procedures (the "Rules") as it was to be sent no later than January 6, 2020. The landlord stated it was sent on January 14, 2020 and received on January 17, 2020.

I accept the evidence of the landlords that they did not receive the tenant's application for dispute resolution in accordance with the Rules. However, the landlords received the tenant's application on January 17, 2020. and the hearing was scheduled for March 9, 2020. I find the landlords had sufficient time to review the tenant's application and make submissions. I do not find the landlords are at any disadvantage. Therefore, I will consider the tenant's application filed on January 1, 2020.

The landlord submit the tenant's amended application was not filed or served 14 days prior to the hearing. The landlords stated it was received on February 26, 2020. The landlords stated that it is unfair and prejudicial to them as they have not had sufficient time to file a response.

The Rule state:

- 4.7 Objecting to a proposed amendment. A respondent may raise an objection at the hearing to an Amendment to an Application for Dispute Resolution on the ground that the respondent has not had sufficient time to respond to the amended application or to submit evidence in reply. The arbitrator will consider such objections and determine if the amendment would prejudice the other party or result in a breach of the principles of natural justice. The arbitrator may hear the application as amended, dismiss the application with or without leave to reapply, or adjourn the hearing to allow the respondent an opportunity to respond.

I accept the evidence of the landlords that the tenant's amended application was filed late; however, the tenant's amended application is directly related to the landlords' claim for unpaid rent and to keep all or part of the security deposit.

Even if I denied the tenant's amended application, the tenant's allegation of overpayment of rent must be considered. Since the tenant under the Act is entitled to

withhold rent, if an overpayment of rent was made. This would impact the landlords monetary claim for unpaid rent.

Further, I find the tenant's amended application for the return of the security deposit is not prejudicial to the landlords because the landlords' application is claiming against the security deposit. The tenant would be entitled to the return of all or part of the security deposit if the landlords fail to prove their claim.

Therefore, I will allow the tenant's amended application. I find this is not prejudicial to the landlords as these are issues that I must consider whether or not the tenant made the amendment.

#### Issues to be Decided

Are the landlords entitled to a monetary order for unpaid rent and utilities?

Are the landlords entitled to retain the security deposit in partial satisfaction of the claim?

Is the tenant entitled to a monetary order for overpayment of rent?

Is the tenant entitled to a monetary order for moving costs?

Is the tenant entitled to the return of the security deposit?

#### Background and Evidence

The parties agreed that the tenancy began on September 1, 2019. Rent in the amount of \$800.00 was payable on the first of each month from September 2019 to April 2020. Rent was decreased to \$500.00 from May 2020 to August 2020. The tenant paid a security deposit of \$350.00. The tenancy ended on December 22, 2019. Filed in evidence is a copy of the tenancy agreement.

#### Landlords' application

The landlords claim as follows:

a.	Unpaid rent for December 2019	\$ 800.00
b.	Unpaid utilities	\$ 172.82
c.	Filing fee	\$ 100.00
	<b>Total claimed</b>	<b>\$1,072.82</b>

Unpaid rent for December 2019

The landlord testified that the tenant did not pay any rent for December 2019. The landlords seek to recover unpaid rent in the amount of \$800.00.

The tenant testified that they did not pay rent for December 2019, as they were served with a One Month Notice to End Tenancy for Cause, based on the landlord receiving a government order as the rental unit was illegal. The tenant stated that they withheld rent as they believed they are entitled to compensation.

Unpaid utilities

The landlord testified that the tenant rental agreement states the tenant is responsible for 15% of the electricity and water. The landlord stated that the agreement further states that the tenant is required to prepay the utilities at the rate of \$50.00 per month, which that amount would be applied when the utility bills were received.

The landlord testified that the amount the tenant owes for electricity after the prepayment was applied is  $\$38.24 + \$54.59 = \$92.83$ . The landlord stated that the amount the tenant owes for water, after the prepayment was applied is \$66.99. The landlords seek to recover the cost of unpaid utilities in the amount of \$157.82.

The landlord testified that the tenant was required by their tenancy agreement to pay \$15.00 per month for internet service. The landlord stated that the tenant did not pay for that service for the month of December 2019. The landlords seek to recover the amount of \$15.00.

The tenant testified that they paid their portion of utilities of \$50.00 per month. The tenant confirmed they did not pay any additional amounts towards the utilities.

The tenant's mother testified that the landlords did not have a separate meter on the rental unit and there were more people residing on the upper floor. The tenant's mother said it was their understanding that utilities were included in the rent.

The tenant testified they did not pay the internet service because they had obtained their own services.

Tenant's application

The tenant claims as follows:

a.	Moving costs	\$ 300.00
b.	Overpayment of rent	\$ 300.00
c.	Return of the security deposit	\$ 350.00
d.	Filing fee	\$ 100.00
	<b>Total claimed</b>	<b>\$1,050.00</b>

Moving costs

The tenant testified that they should be entitled to moving cost because they were evicted because the landlord had to end the tenancy due to a government order. The tenant stated they also received a 10 Day Notice to End Tenancy for Unpaid Rent when they failed to pay the rent.

Overpayment of rent

The tenant's mother testified that they negotiated the tenancy agreement with the landlord and rent was to be \$700.00 per month. The tenant's mother stated that their child signed the tenancy agreement without her, and their child did not fully understand or read the agreement.

The tenant testified that they did not read the tenancy agreement when they signed the document. The tenant seeks to recover overpayment of rent for September, October and November 2019 for a total amount of \$300.00.

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 respective claim.

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.

### Landlords' application

#### Unpaid rent for December 2019

Rules about payment and non-payment of rent are defined in Part 2 of the Act.

#### **Rules about payment and non-payment of rent**

**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.*

I accept the evidence of the tenant that they did not pay rent for December 2019. The evidence of the tenant was they did not pay rent because they believed they were entitled to compensation for receiving a notice to end tenancy pursuant to section 47 of the Act.

I find the tenant breached the Act when they failed to pay rent for December 2019. When a tenant receives a notice to end tenancy, such in this case, it was a One Month Notice to End Tenancy for Cause. Section 47 of the Act does not allow a tenant to withhold the rent. I find the tenant breached the Act when they failed to pay rent for December 2019. A tenant cannot withhold rent simply because they feel entitled to do so. Therefore, I find the landlords are entitled to recover unpaid rent for December 2019 in the amount of **\$800.00**.

#### Unpaid Utilities

In this matter, the tenancy agreement states the tenant is responsible for 15% of the electricity and water invoices. The tenancy agreement provides that the tenant is to pay \$50.00 per month that is to be credited towards these services. The tenant is also to pay \$15.00 towards internet service.

While I accept the tenant obtained their own internet service, I find that does not release them from their obligation under the tenancy agreement.

I have calculated the total invoices in the following table:

Total costs invoices	Tenant's portion 15%
Electricity from September 26, 2019 to November 26, 2019 \$654.97x15%	\$98.24
Electricity from November 26, 2019 to January 24, 2020 \$856.08 (59 days) daily amount \$13.81 for 26 days totals \$359.06 x 15%	\$53.85
Water \$1,014.27 from September 25, 2019 to January 24, 2020 (122 days) daily amount \$8.31 x 89 days = \$739.59	\$110.00
Total owed by tenant	\$262.09
Total credits received from tenant (sept, Oct, Nov) \$50.00 x 3 months	(\$150.00)
Total due by tenant	\$112.09
Internet December	\$ 15.00
<b>Total due</b>	<b>\$127.09</b>

Base on my above calculation, I find there is a balance owed by the tenant. While my calculation differs from the landlords, my calculation was based on the evidence given at the hearing.

I find the tenant breached the tenancy agreement when they failed to pay the balance due for the services as described above. Therefore, I find the landlords are entitled to recover the above amount of **\$127.09**.

I find that the landlords have established a total monetary claim of **\$1,027.09** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlords retain the security deposit of **\$350.00** in partial satisfaction of the claim and I grant the landlords a monetary order under section 67 of the Act for the balance due of **\$677.09**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

### Tenant's application

#### Moving costs

In this case, the tenancy legally ended in accordance with the Act, pursuant to section 46 and 47 of the Act. I find the tenant is not entitled to recover moving cost as a result they are not entitle moving costs. Therefore, I dismiss this portion of the tenant's claim.

#### Overpayment of rent

The evidence of the tenant's mother was that rent was negotiated at \$700.00 per month and that their child did not read the tenancy agreement when they entered into the contract. The tenant's mother believes they are entitled to the return of \$100.00 per month for the three months for a total of \$300.00.

Whether the tenant's mother negotiated a verbal tenancy agreement with the landlord that differs from the tenancy agreement signed by the tenant; that agreement does not supersede the signed tenancy agreement. The tenant is responsible to ensure that they have read and fully understand any agreement prior to signing. I find the tenancy agreement signed by both parties is legally binding.

As the tenant did not pay more than their tenancy agreement states, I find the tenant did not overpay rent. Therefore, I dismiss this portion of the tenant's claim.

#### Security deposit

I have previously found the landlords are entitled to keep the security deposit to offset their claim. I find the tenant is not entitled to the return of the security deposit. Therefore, I dismiss this portion of the tenant's claim.

### Conclusion

The landlords are granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlords are granted a formal monetary order for the balance due.

The tenant's application is dismissed.



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 11, 2020

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Residential Tenancy Branch