



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, MNR, FF

Introduction

The landlord and the tenant convened this hearing in response to applications.

The landlord's application is seeking orders as follows:

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

The tenant's application is seeking orders as follows:

1. Return all or part of the security deposit;
2. For a monetary order for money owed; and
3. To recover the cost of filing the application.

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.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid utilities?

Is the landlord entitled to monetary compensation for damages?

Is either party entitled to the security deposit?

Is the tenant entitled to a monetary order for money owed?

Background and Evidence

The parties agreed that the tenancy began on November 15, 2011. Rent in the amount of \$925.00 was payable on the first of each month. The tenant paid a security deposit of \$463.00. The tenancy ended on May 2, 2018.

The landlord's application

The landlord claims as follows:

a.	Unpaid utilities	\$ 199.98
b.	Paint blocker to cover up smoke damage	\$1,221.95
c.	Overholding the premises by 2 days	\$ 90.00
d.	Additional security	\$ 634.20
	Filing fee	\$ 100.00
	Total claimed	\$2,246.13

Unpaid utilities

The landlord testified that the tenancy agreements stated that the tenant is required to pay their portion of the utilities for sewer and garbage. The landlord stated that the tenant failed to pay from January 1, 2018 to April 2, 2018. Filed in evidence are copies of the utility invoices.

The tenant testified that they never pay for this utility at any time during the tenancy.

Paint blocker to cover up smoke damage

The landlord testified that the tenant was not to allow smoking in their rental unit. The landlord stated that the tenant's son was smoking and using cannabis. The landlord stated that they are not charging for painting the cosmetic paint; however, they had to apply a paint blocker to seal in the smell of smoke. The landlord seeks to recover the paint and labour for the sealer paint in the amount of \$1,221.95.

The tenant denied that there was any smoking in the rental premise.

Overholding the premises by 2 days

The landlord testified that the tenant was required to vacate on April 30, 2018. The landlord stated that the tenant did not leave the premises until May 2, 2018. The landlord seeks to recover two (2) days of rent for the tenant overholding the premises in the amount of \$90.00.

The tenant testified that they were out on May 1, 2018.

The landlord argued that tenants were not gone on May 1, 2018, and it was not until late on May 2, 2018, that they vacated. The landlord stated they have text messages that were sent to the tenant's son. Filed in evidence are copies of those text messages.

Additional security

The landlord testified that they were receiving threats from tenant and the tenant's son and as a result they had to hire security for a short period of time. The landlord stated that the tenant's son was charged with two counts of uttering threats and those charges are currently outstanding.

The tenant testified that the landlord was causing a lot of the problem escalating the issues. The tenant does not agree that the landlord needed to hire personal security.

The tenant's application

The tenant claims as follows:

a.	Return of Deposit	\$ 463.00
b.	Compensation pursuant to a Two Month Notice	\$1,850.00
	Filing fee	\$ 100.00
	Total claimed	\$2,412.00

Return of Deposit

I find it not necessary to consider this matter as the tenant is entitled to either the return of the security or to have the security offset with the landlord's claim. Any offset will be done at the end of this decision.

Compensation pursuant to a Two Month Notice

The tenant testified that they seek compensation for receiving a Two Month Notice to End Tenancy for Landlord's Use of Property. The tenant stated they do not believe the landlord required vacant possession. The tenant stated that they believe renovations were completed because the landlord is charging a higher rent.

The landlord testified the renovations were made.

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.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

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.

Unpaid utilities

In this case, the tenancy agreement confirms the tenant is required to pay for sewer and garbage. I find the landlord, the new owner, had the right to rely upon the signed agreement. Therefore, I find the landlord is entitled to recover unpaid utilities in the amount of **\$199.98**.

Paint blocker to cover up smoke damage

The evidence of the landlord was that the rental unit was smoked in by the tenant or the tenant's son. The tenant denies this.

While I accept the landlord has provided an estimate from the painter to have the smoked sealed, I am not satisfied the tenant is responsible for the cost.

I accept there was a no smoking clause; however, I find the landlord has failed to provide sufficient evidence such as past history of the rental unit, such as a move –in inspection report or showing that the rental unit was not smoked in prior to this tenancy starting. Therefore, I decline to award the landlord the cost of the paint or labour. This portion of the landlord's claim is dismissed.

Overholding the premises by 2 days

The evidence supports that the tenancy legally ended on April 30, 2018, the tenant did vacate the premise until May 2, 2018. I find the landlord is entitled to recover two (2) days of occupancy rent in the amount of **\$90.00**.

Additional security

Although I accept there were difficulties with the ending of the tenancy; however, I am not satisfied that the tenant is responsible for the cost of hiring security. The invoice for the May 30, 2018, was to have someone watch the premises to ensure no damage was done. I find that was a business choice the landlord made and not the responsibility of the tenant.

Further, I am not satisfied that the invoice for the two premises for the month of May, 2018, were to guard the premises, as it appears there was a \$5.00 charge for each day, this leads me to believe they were not on site for safety issues.

Furthermore, I find this was a business choice of the landlord. Therefore, I find the landlord is not entitled to recover the security cost. This portion of the landlord's claim is dismissed.

I find that the landlord has established a total monetary claim of **\$389.98** comprised of the above described amounts and the \$100.00 fee paid for this application.

Tenant's application

Compensation pursuant to a Two Month Notice

In this case, the tenant argued the rental unit did not need vacate possession for the renovations; however, that was an argument the tenant was to make prior to the tenancy ending. The rental unit was renovated as required by the notice. I find the tenant has failed to prove this portion of the claim

Security deposit

Since I have found the landlord has established a total monetary claim of **\$389.98**, I order that the landlord retain the above amount from the security deposit of **\$463.00**. I grant the tenant a monetary order for the balance due **\$73.02**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The landlord **is cautioned** that costs of such enforcement are recoverable from the landlord.

Conclusion

The landlord is granted a monetary order and may keep a portion of the security deposit in partial satisfaction of the claim and the tenant is granted a formal order for the balance due.

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: November 09, 2018

Residential Tenancy Branch