



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCL-S, FFL

### Introduction

This hearing dealt with the landlord's application, filed on September 17, 2021, pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order of \$2,457.50 for compensation under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit of \$547.50, pursuant to section 38; and
- authorization to recover the \$100.00 filing fee paid for this application, pursuant to section 72.

The landlord and the tenant attended this hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 71 minutes from 1:30 p.m. to 2:41 p.m.

The landlord and the tenant confirmed their names and spelling. They both provided their email addresses for me to send a copy of this decision to both parties after the hearing.

The landlord stated that he owns the rental unit, and he provided the rental unit address.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("Rules") does not permit recording of this hearing by any party. At the outset of this hearing, the landlord and the tenant both separately affirmed, under oath, that they would not record this hearing.

I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. Both parties had an opportunity to ask questions, which I answered. I informed both parties that I could not provide legal advice to them or act as their agent or advocate. Both parties confirmed that they were ready to proceed with this hearing, they did not want to settle this application, and they wanted me to make a decision. Neither party made any adjournment or accommodation requests.

#### Preliminary Issue – Service of Documents

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package and the landlord confirmed receipt of the tenant's evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's application and the landlord was duly served with the tenant's evidence.

The landlord stated that he sent a copy of a written tenancy agreement, signed between the tenant and the former landlord in December 2011, as evidence to the tenant on May 4, 2022, by way of registered mail and email. The tenant stated that he received the tenancy agreement on May 5, 2022, by registered mail. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the tenancy agreement on May 5, 2022.

The tenant said that he did not want the tenancy agreement to be considered at this hearing or in my decision, even though he received and reviewed it. He claimed that the evidence was late, he sent his evidence on time, and he did not have prior notice of the tenancy agreement. He stated that he was given the tenancy agreement at the beginning of his tenancy with the former landlord, but he lost it. He said that the tenancy agreement was not helpful to his case because it does not include utilities in the monthly rent amount.

The landlord claimed that he thought he sent the tenancy agreement to the tenant with the landlord's original application but realized he did not, so he sent it on May 4, 2022. I informed the landlord that I received the tenancy agreement on the online RTB website on September 17, 2021, and again on May 4, 2022.

I considered the tenancy agreement at the hearing and in my decision, as per Rule 3.17 of the *RTB Rules*, even though it was received late by the tenant, less than 14 days prior to this hearing, contrary to Rule 3.14 of the *RTB Rules*. I find that the tenancy agreement is relevant to this application for the reasons noted below, in this decision.

I find that the tenant was unable to identify any prejudice to him, as a result of me considering the tenancy agreement at the hearing and in my decision. The tenant received the evidence on May 5, 2022, at least five days prior to this hearing, and reviewed it. The tenancy agreement is from December 2011, more than 10 years prior to this hearing date on May 10, 2022, and the tenant agreed that he had a copy of it, until he lost it.

During this hearing, the tenant testified about the contents of the tenancy agreement and agreed that the information was accurate. The tenant agreed that his name and signature were on it, that he signed it with the former landlord, and that the rent details were correct. The tenant's main issue with the tenancy agreement was that it was unhelpful to his submissions.

The landlord uploaded a copy of the tenancy agreement to the online RTB system when he filed his application on September 17, 2021. The landlord provided another copy on the online RTB system on May 4, 2022, thinking that he had forgotten to include it, initially. I find that the landlord did not provide a copy of the tenancy agreement to the tenant with his original application, inadvertently, rather than intentionally.

#### Issues to be Decided

Is the landlord entitled to a monetary order for compensation under the *Act, Regulation* or tenancy agreement?

Is the landlord to retain the tenant's security deposit?

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

#### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on December 1, 2011, with the former landlord. The landlord purchased the rental unit and assumed this tenancy in May 2021. This tenancy ended on September 4, 2021, when the tenant finished cleaning the rental unit and returned the keys to the landlord. Monthly rent in

the amount of \$1,095.00 was payable on the first day of each month. A security deposit of \$547.50 was paid by the tenant and the landlord received the deposit from the former landlord and continues to retain it. A written tenancy agreement was signed between the tenant and the former landlord, and a copy was provided for this hearing. No new written tenancy agreement was signed between the tenant and the landlord. No move-in condition inspection report was completed with the former landlord or the landlord. No move-out condition inspection report was completed with the tenant and the landlord. The tenant provided a forwarding address by text message on September 5, 2021, which was received by the landlord. The landlord did not have written permission to keep any part of the tenant's security deposit.

The landlord confirmed that he seeks a monetary order of \$2,457.50 for unpaid utilities and to recover the \$100.00 application filing fee from the tenant.

The landlord testified regarding the following facts. The landlord received the tenant's outstanding utility bill for \$2,457.50 for the rental unit. The tenant has a written tenancy agreement with the former landlord and the landlord's agent, which was signed in 2011. The tenancy agreement states that utilities are to be paid by the tenant and are not included in the rent. The landlord received a bill from the City in July 2021, with an outstanding amount for utilities. The landlord told the tenant about the utility bill and the tenant said he would look after it, so the landlord thought it was done by the tenant. The utility bill was not paid by the tenant when he moved out. The utilities amount increased from July to September 2021. The tenant said that he talked to the City and he would sort out the payment, but this was never done when the landlord checked with the City. The City utility department sent a statement to the landlord on September 17, 2021, providing the accrued amount up to September 8, 2021. The tenancy ended on September 4, 2021, so four days need to be discounted in the utility bill. The landlord was told by the City that if the utility bill was not paid by the end of the year, it would be applied to his property taxes, so he paid it before the end of the year to avoid a penalty. The landlord has a text messaging chain with the tenant. The landlord sent a text message with the utility bill to the tenant on July 27, 2021, and the tenant said that he received the utility bill, and he would take care of it. The tenant said that there was an error in the utility bill. The landlord did not provide a proof of payment, when he paid the entire utility bill in December 2021, because he did not know that he had to provide same for this hearing. He did not have a copy of the proof of payment in front of him during this hearing, because he would have to look it up on his online banking records. Even though he does not have a copy of the proof of payment, the tenant still owes the money for the utility bill.

The tenant testified regarding the following facts. There was no walkthrough done on move-in or move-out. The landlord was silent from September 10 to 16, 2021, and did not respond to the tenant's text messages. On September 17, 2021, the landlord said that he would be filing an RTB application against the tenant and told the tenant not to speak to him except through the RTB. The landlord sent text messages to the tenant on September 26, 2021, and January 27, 2022, and he also called the tenant on December 22, 2021. The landlord contacted the tenant but told the tenant not to contact him. The tenant received utility bills addressed to another tenant CM who previously lived at the rental unit in 1997. The tenant returned these utility bills back to sender because they were not in his name. The former landlord paid the utility bills for 21 years and set a precedent. The former landlord asked the tenant to put the utility bills in the tenant's name, so the tenant did so out of fear of losing his tenancy. The tenant went to the City department to figure out the utilities owing. But the landlord has to deal with the former landlord regarding the utilities owed prior to May 2021, before the landlord purchased the rental unit, which is a separate issue. The tenant does not agree that he owes any utilities to the landlord. However, if the Arbitrator decides that the tenant is required to pay, he should only owe \$1,331.05 to the landlord because this is the amount for utilities from May 1 to September 4, 2021, when the landlord assumed this tenancy after purchasing the rental unit.

The landlord stated the following in response to the tenant's testimony. There is no precedent set by the former landlord because the tenant started paying utility bills eight years into his tenancy, and for the last few years of his tenancy with the former landlord. The tenant agreed that he was responsible for the utility bills. The utility bills are the responsibility of the property owner at the time, which is the landlord, not the previous owner and former landlord. The landlord could provide a copy of the text messages from July 27, 2021, after this hearing. However, the tenant agreed that he received the utility bill referenced in that text message.

The tenant stated the following in response to the landlord's submissions and my questions. He made one payment for utilities and then stopped because it was unclear. He put the utility bills in his name out of fear, because the former landlord told him to do so, and there was little communication with the former landlord during his tenancy. The tenant agrees that his name appears on the first page and his name and signature appear on the last page of the tenancy agreement, that he signed with the former landlord in 2011. He agrees that section 3 on page 2 of the tenancy agreement states what is included in the rent. Water, electricity, heat, and garbage disposal are not included in the monthly rent. Sewer costs are not mentioned in the tenancy agreement. The tenant paid for water and electricity costs at the rental unit. He agrees that he owes

utilities as per the tenancy agreement. He agrees that he got the landlord's July 27, 2021 text message. He agrees that he received a bill from the City in his name, and he received the landlord's evidence for this hearing regarding the utility bills.

### Analysis

The following RTB *Rules* state, in part:

*7.4 Evidence must be presented*

*Evidence must be presented by the party who submitted it, or by the party's agent...*

...

*7.17 Presentation of evidence*

*Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence...*

*7.18 Order of presentation*

*The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof...*

During this hearing, I informed both parties that they were not required to rush their submissions and they were being given a full opportunity to present their submissions and evidence and respond to the other party's submissions and evidence. I notified both parties that we could adjourn this hearing to a later date, in order to allow both parties additional time, if they required, to present their submissions and evidence. Both parties were provided with ample and additional time of 71 minutes during this hearing, beyond the 60-minute hearing time limitation, to present their submissions and evidence. Both parties confirmed that they completed presenting their submissions and evidence, they responded to the other party's submissions and evidence, and they had no further submissions or evidence to present for this application.

This hearing lasted 71 minutes, so both parties had ample opportunity to present their submissions and evidence. I repeatedly asked both parties if they had any other information to add and if they wanted to respond to the other party's submissions. Both parties were provided with an opportunity to question the other party during this hearing. The landlord questioned the tenant, but the tenant declined to question the landlord, despite being asked if he wanted to do so.

During this hearing, I notified the landlord that, as the applicant, he had the burden of proof, on a balance of probabilities, to prove his monetary claim. The landlord confirmed his understanding of same and stated that he was prepared and wanted to proceed with this hearing.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate a landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the landlord 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 landlord in violation of the *Act*, *Regulation* or tenancy agreement;
- 3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- 4) Proof that the tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

On a balance of probabilities and for the reasons stated below, I make the following findings based on the testimony and evidence of both parties. I grant the landlord's application for \$2,457.50 in unpaid utilities from the tenant.

I find that the signed, written tenancy agreement between the tenant and the former landlord, does not include water, heat, electricity, garbage disposal, or sewer costs, in the monthly rent amount of \$1,095.00. The tenant agreed with the above information during this hearing. While sewer costs are not specifically mentioned in section 3, page 2 of the tenancy agreement, I find that they are not included in rent, since they are not mentioned as part of the monthly rent amount.

I accept the landlord's affirmed testimony that he received utility bills for the rental unit, that he was responsible to pay as the current owner, after he purchased the rental unit from the former landlord. The landlord provided an email from the "Utility Billing Section, Finance Department" of the City, in response to the landlord's email from September 17, 2021, stating that the utility amounts for water, sewer, and garbage

costs would be added to the landlord's property taxes as the current property owner, if they were unpaid by December 31, 2021, since the landlord was responsible for the costs. The email further states that the tenant did not pay for the utility amounts or arrange for a payment plan with the City. The email references notice of a move-out from the tenant and a bill that was generated by the City, for the period ending on September 1, 2021, for this purpose.

The landlord provided a utility bill received from the City, with the landlord's name and the rental unit address, in the amount of \$2,095.75, for the period from March 20, 2021 to July 21, 2021. It includes a previous unpaid balance from July 15, 2021, for \$1,126.45. The utility bill references charges for water, sewer, and garbage fees. The landlord also provided a copy of a utility ledger provided by the City, with the account number for the rental unit, in the amount of \$2,457.50 for the period ending September 1, 2021. While this ledger indicates that the effective payment date is September 8, 2021, the utility usage period ends on September 1, 2021. Therefore, I find that no deductions need to be made from this bill, for the four days from September 4 to 8, 2021, initially claimed by the landlord, since the tenancy ended on September 4, 2021.

The tenant agreed that he received utility bills from the City, he discussed them with the City, he was notified about the utility bills from the landlord, and he received the landlord's evidence with the utility bills. The tenant provided his own copies of utility bills as evidence for this hearing.

The tenant agreed that he put the utilities in his name and was paying for them, during his tenancy with the former landlord. This was prior to the landlord assuming this tenancy in May 2021. Although the tenant stated that he was in fear of the former landlord, I find that the tenant failed to show that he was under duress during that time. The tenant continued to live at the rental unit and pay for the utilities that were in his name for years, prior to the landlord purchasing the rental unit. The tenant did not vacate the rental unit or provide evidence that he filed RTB applications to dispute the utility costs with the former or current landlords. The tenant is only disputing the utility costs at this hearing, after the end of this tenancy, and only after the landlord filed this application first. I find that there was no precedent set with the former landlord, since the tenant paid for utility bills during that time, despite claiming that the former landlord had paid it for 21 years prior. The former landlord did not appear at this hearing to provide witness testimony.

Accordingly, I find that the tenant is responsible to pay for water, garage, and sewer utility costs to the landlord, while he was residing at the rental unit. I find that the



landlord is entitled to the full amount claimed of \$2,457.50, for the period ending on September 1, 2021.

I accept the landlord's undisputed, affirmed testimony that he paid \$2,457.50 to the City in December 2021, for water, sewer, and garbage utilities provided to the tenant, while he was residing at the rental unit, during his tenancy. Although the landlord did not provide a documentary proof of payment for this hearing, the tenant did not dispute the landlord's testimony during this hearing.

As the landlord was successful in this application, I find that he is entitled to recover the \$100.00 filing fee from the tenant.

The landlord continues to hold the tenants' security deposit of \$547.50. Over the period of this tenancy, no interest is payable on the deposit. This tenancy ended on September 4, 2021. The landlord did not have written permission to keep any amount from the tenant's deposit. The landlord filed this application to retain the tenant's deposit on September 17, 2021.

I find that the tenant is not entitled to double the value of his security deposit because he did not provide a proper written forwarding address to the landlord, since text message is not an approved service method under section 88 of the *Act*.

Although the landlord's right to retain the security deposit for damages was extinguished for failure to complete a move-out condition inspection report, as per section 36 of the *Act*, the landlord applied for utilities, not damages, in this application.

In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's entire security deposit of \$547.50, in partial satisfaction of the monetary award.

I issue a monetary order for \$2,010.00 to the landlord against the tenant, for the balance due.

### Conclusion

The landlord's application is granted.

I order the landlord to retain the tenants' entire security deposit of \$547.50, in partial satisfaction of the monetary award.

I issue a monetary order in the landlord's favour in the amount of \$2,010.00 against the tenant. Should the tenant 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: May 10, 2022

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Residential Tenancy Branch