



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNR, FF

Introduction

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

The landlords' application 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 is seeking orders as follows:

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

Only the landlord's agents appeared.

The Residential Tenancy Branch records show both parties were served in the method noted in the special instructions with the Notice of a reconvene hearing.

Preliminary matter

This matter commenced on February 14, 2019, and was adjourned to today's date for continuation. The interim decision was made on February 27, 2019, which should be read in conjunction with this decision.

The landlord's application was not scheduled to be heard on February 14, 2019, due to an administrative error made by the Residence Tenancy Branch. The landlord's file was joined to be heard at today's hearing.

The landlord's agents stated that the landlord's application was served on the tenant on January 28, 2019, by registered mail and was returned unclaimed by the tenant. A Canada post tracking number was provided as evidence.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenant has been duly served in accordance with the Act. Refusal or neglect to pick up the package does not override the deemed service provisions of the Act.

Tenant's application

This matter was set for hearing by telephone conference call at 9:30 A.M on this date. The line remained open while the phone system was monitored for ten minutes and the only participant who called into the hearing during this time was the landlord. Therefore, as the tenant did not attend the hearing by 9:40 A.M, and the landlord's agents appeared and were ready to proceed, **I dismiss the tenant's application without leave to reapply.**

Issues to be Decided

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

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The parties agreed that the tenancy began September 2017. Rent in the amount of \$935.00 was payable on the first of each month. The tenant paid a security deposit of \$475.50. The tenancy ended on September 4, 2018.

The landlords claim as follows:

a.	Unpaid rent for August 2018	\$ 935.00
b.	Unpaid utilities during tenancy	\$1,454.66
c.	Filing fee	\$ 100.00
	Total claimed	\$2,489.66

The landlord's agents testified that the tenant did not pay rent for August 2018. The landlord seeks to recover unpaid rent in the amount of \$935.00.

The landlord's agents testified that the tenant was required to pay the utilities. The agents stated that the tenant stopped paying the utilities in December 2017. The agent stated because the utilities were in the tenant's name they were unaware that the tenant had failed to pay the amount of \$1,437.62, until they received notice from the utility company. The agents stated unpaid utilities get transferred to the property tax.

The landlord's agents testified that they spoke to the utility company because they should have been notified when the tenant stopped pay the utility and they were able to lower the cost of outstanding utilities to the amount of \$970.12. The landlord seeks to recover the cost of the amount of \$970.12. Filed in evidence is proof of payment and unpaid utilities invoices in the tenant's name.

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, landlord has the burden of proof to prove their 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.

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 landlord's agent that the tenant failed to pay rent for August 2018. I find the tenant has breached section 26 of the Act and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover unpaid rent in the amount of **\$935.00**.

I accept the evidence of the landlord's agent that the tenant failed to pay the utilities. This is supported by the invoice in the tenant's name, showing unpaid utilities. The landlord's agents negotiate a lower amount due. I find the tenant breached the Act, and the tenancy agreement when they failed to pay utilities owed and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover unpaid utilities in the amount of **\$970.12**.

I find the landlords have established a total monetary claim of **\$2,005.12**, comprised of the above describe amounts and the cost of \$100.00 to recover the cost of the filing fee.

I find the landlords made their application on August 24, 2018, seeking to claim against the damage deposit for unpaid rent, although it was lost by the Residential Tenancy Branch, I find their application was filed in compliance of the Act.

I order that the landlords retain the security deposit of **\$467.50** in partial satisfaction of the claim and I grant the landlords an order under section 67 of the Act for the balance due of **\$1,537.62**.

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.

Conclusion

The tenant's application is dismissed. 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 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: April 09, 2019

Residential Tenancy Branch