



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FFL, MNDCL – S, MNDL - S

Introduction

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. A monetary order in the sum of \$2364.26 for unpaid utilities, damages and failure to clean.
- b. An order to keep the security deposit.
- c. An order to recover the cost of the filing fee

The tenant(s) failed to appear at the scheduled start of the hearing which was 1:30 p.m. on July 19, 2019. The landlords were present and ready to proceed. I left the teleconference hearing connection open and did not start the hearing until 10 minutes after the schedule start time in order to enable the tenant to call in. The tenant(s) failed to appear. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. On July 10, 2019 the tenant uploaded a 3 page summary of her position which stated that she could not attend the hearing via telephone due to the fact that she was working in a location that does not have cellular service and she was not able to take the day off work.

I then proceeded with the hearing. The landlords were given a full opportunity to present affirmed testimony, to make submissions and to call witnesses. The relevant provisions of the tenant's summary were carefully considered.

On the basis of the solemnly affirmed evidence presented at the hearing and the unsworn documentary evidence presented by the tenant a decision has been reached.

Preliminary Matter:

The Tenant uploaded a 3 page summary and 7 other documents on July 10, 2019. However, the tenant failed to serve the summary and evidence on the landlords with the exception of a letter dated May 8, 2019 requesting the return of her deposit.

3.15 Respondent's evidence provided in single package

Where possible, copies of all of the respondent's available evidence should be

submitted to the Residential Tenancy Branch online through the Dispute Access Site or directly to the Residential Tenancy Branch Office or through a Service BC Office. The respondent's evidence should be served on the other party in a single complete package.

The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10), and subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch **not less than seven days before the hearing (my emphasis)**.

The Respondent failed to comply with the Rules of Procedure relating to the service of evidence on the Applicant. However, I determined that it was appropriate to consider the relevant evidence and the Summary given by the tenant as she determined that she could not attend.

I find that the Application for Dispute Resolution and Notice of Dispute Resolution Hearing was served on the tenant by mailing, by registered mail to where the tenant resides on April 18, 2019. With respect to each of the applicant's claims I find as follows:

Issues to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to a monetary order and if so how much?
- b. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- c. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence:

The parties entered into a written tenancy agreement that provided that the tenancy would start on February 1, 2018. The tenancy agreement provided that the tenant(s) would pay rent of \$1200 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$500 at the beginning of the tenancy.

The tenancy ended on March 31, 2019 after the landlord served a 2 month Notice to End on the Tenant. The tenant's application to dispute the Notice to End Tenancy was dismissed in a hearing that was held on March 11, 2019.

The Application for Dispute Resolution filed by the landlord seeks a monetary order in the sum of \$2364.26. The monetary order worksheet identifies the following claims:

1. City ... utilities	\$1139.25	
2. Amazon.ca – damaged and missing items		\$ 809.01
3. Rentco Equipment – Carpet cleaner		\$ 56.00
4. Inside cleaning services (5 hrs.)		\$ 125.00
5. Outside cleaning services (3 hrs.)		\$ 75.00
6. Erickson's Electric – replacement fire alarm system		<u>\$ 160.00</u>
	Total	\$2364.26

The landlords stated they wish to deal with the claim for the City utilities and an order to retain the security deposit in this hearing and they requested that they be given permission to withdraw the claims in 2 to 6 above. I determined the tenant was not present at the hearing and would not be prejudiced by such an order. I ordered that the claims in items 2 to 6 above be dismissed with leave to re-apply.

I determine that it was not necessary to deal with the tenant's evidence and submissions relating to these claims as they have been withdrawn.

Monetary Order and Cost of Filing fee

I determined the landlord has established a claim for the City ... utility bills in the sum of \$1139.25 for the following reasons:

- The landlords provided evidence that they paid these bills. These bills covered the cost of water, sewer, garbage, water infrastructure and sewer infrastructure.
- The tenancy agreement provides that water, sewage disposal, garbage collection, recycling services and kitchen scrap collection is not included in the rent.
- I determine there was an agreement between the parties that the tenant would pay the City ... utility bills.
- The 3 page tenant summary that states "The Landlords and Tenant did not agree that any utilities would be payable to the Landlord; the Tenant had utilities registered in her own name (gas and electricity: and there was no discussion of city utilities (water, garbage) not being included in the rental price prior to the Tenant moving into the residence." The landlord produced an e-mail from the tenant dated September 28, 2019 which

states "...I was going to ask, can you scan me copies of those bills please. I go a form from the city to put it in my name ...I just haven't gotten around to forwarding to you." I determined this supports the landlord's evidence that the parties agreed the tenant would pay the City of ... utility bill.

- The tenant gave the landlord an e-transfer for the utility charges but did not give the landlord the password. Once the tenant received the decision that her application to cancel the 2 month Notice to End Tenancy was dismissed and that she would have to vacate by the end of March she cancelled that e-transfer.
- I accept the testimony of the landlord to the evidence of the tenant that the parties agreed the tenant would be responsible to pay the City of ... utility bills.
- I do not accept the submission of the tenant that the landlords' claim for the utilities was dismissed in an arbitration dated March 28, 2019. The Tenant's materials refers to that decision which includes the following:

"Section 46(6) of the Act allows a landlord to treat unpaid utilities as unpaid rent if

(a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

I find that the tenancy agreement states that the utilities are not included in the rent, but does not specify that the tenant is to pay the utilities to the landlords. For this reason, I find that the landlord is not able to treat the unpaid utilities as unpaid rent for the purposes of issuing a 10 Day Notice.

Therefore, I dismiss the landlord's application to end this tenancy and obtain an Order of Possession on the basis of the 10 Day Notice dated March 5, 2019, without leave to reapply.

The 10 Day Notice dated March 5, 2019 is cancelled and of no force or effect.

For the same reasons identified in the 10 Day Notice the landlord's application for a Monetary Order for unpaid rent is dismissed, with leave to reapply.

I do not accept the submission of the tenant that the landlords' claim for reimbursement of the utility bills has been dismissed without leave to re-apply. The landlord's claim was for an Order of Possession and a monetary order was in the context of a Direct Request application. The adjudicator dismissed the landlord's claim by Direct Request on the basis that the utility charge could not be included as rent and therefore the landlords' claims in this application was dismissed. The landlords' was given leave to re-apply for the cost of the utility bills.

In summary I determined the landlords have established a monetary claim against the tenant(s) in the sum of \$1139.25 plus the \$100 filing fee for a total of \$1239.25.

Security Deposit

Section 72(2)(b) of the Residential Tenancy Act provides as follows;

Director's orders: fees and monetary orders

72 (2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

...

(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

I determined the security deposit plus interest totals the sum of \$500. I determined the landlord is entitled to retain this sum. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$739.25

Conclusion:

I ordered that the landlords shall retain the security deposit of \$500. I further order that the Tenant pay to the Landlords the sum of \$739.25. I ordered that the landlords claim for items 2 to 6 set out above be dismissed as withdrawn. The landlords have leave to re-apply.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties.

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: July 19, 2019

Residential Tenancy Branch