



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL MNDCL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for compensation for loss under the *Act* pursuant to section 67 of the *Act*; and
- recovery of the filing fee for this application from the tenants pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Landlord R.B. attended and confirmed that she was authorized to speak on behalf of both named landlords in this matter.

The landlord testified that she served the tenant with the notice of this hearing and her evidence by Canada Post registered mail on May 1, 2019 and referred to the registered mail receipt with tracking number (noted on the cover sheet of this Decision) submitted into evidence in support of her testimony. The tenant denied receipt of the registered mail package and stated that she had been notified of the hearing by email. During the hearing I accessed the Canada Post website and confirmed that the registered mail package was shown as delivered and signed for by someone with the tenant's first initial and last name on May 3, 2019. As such, I find that the tenant was served with the landlord's notice of hearing and evidence in accordance with sections 88 and 89 of the *Act*.

The tenant testified that she sent by regular mailed her evidence the landlord to the address for service provided by the landlord on a prior Two Month Notice to End Tenancy for Landlord's Use (Two Month Notice) that had been served on the tenant. The tenant referred to a photograph submitted into evidence of the returned package with direction from Canada Post that the address was "incomplete". I referred to the Two Month Notice submitted into evidence by the tenant and confirm the tenant used the address provided on the notice. The landlord confirmed that the unit number was missing from the address. As such, I find that the tenant served the evidence in accordance with section 88 of the *Act*.

As I have found that both parties served their evidence in accordance with the *Act*, I have considered the evidence of each party in this matter. I advised the parties to provide verbal testimony to explain any relevant evidence that was not before the other party.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for compensation for loss?

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

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

A written tenancy agreement was submitted into documentary evidence by the landlord, confirming that this tenancy began August 1, 2018 as a fixed-term tenancy set to end on January 31, 2019. The tenancy continued on a month-to-month basis until the tenancy ended on March 31, 2019 when the tenants returned possession of the rental unit back to the landlords. Although the tenant at first agreed that this was the end date of the tenancy, she later claimed that they moved out in the middle of March 2019. The tenant did not submit any evidence to support her claim and I note that the tenant confirmed that the condition inspection at move out was not conducted until March 31, 2019 as supported by documentary evidence submitted by the tenant, and that the keys were not returned to the landlord until March 31, 2019. Therefore, I find that the tenancy ended March 31, 2019 when the landlord's regained vacant possession of the rental unit.

Monthly rent, payable on the first of the month, was \$2,100.00. The tenant paid a security deposit of \$1,050.00 at the beginning of the tenancy, which has been returned to the tenant.

The written tenancy agreement does not include utilities in the monthly cost of rent as the boxes for utilities are not checked off to indicate inclusion as part of rent.

The landlords' claim sought to recover the cost of utilities as follows:

Item	Amount
60% of gas utility from February 25 to March 25, 2019	\$74.50
60% of electricity utility from January 25 to March 26, 2019	\$181.56
Total Monetary Claim	\$256.06

In support of her testimony, the landlord submitted copies of the utility bills into evidence and emails between the landlord and tenant in which the tenant confirmed the agreement between the parties that the tenant was responsible for payment of 60% of the rental property utility costs.

The tenant claimed that she did not pay the utilities for the following reasons:

- At the move out condition inspection the tenant claimed that the landlord confirmed all rent and utility bills were "paid up to date".
- The tenant claimed that she was not responsible for the last two weeks of utility costs as she was no longer residing at the rental unit, although she confirmed she had not returned the keys to the rental unit until March 31, 2019.
- The tenant claimed that the landlords provided a washer and dryer to the occupants of the lower level rental unit and that this resulted in increase utility costs that should not be the responsibility of the tenant.
- The tenant claimed that her husband had contacted the Residential Tenancy Branch and was told that they were not responsible for paying rent or utilities for the last month of the tenancy as a result of having received a Two Month Notice.

Both parties were asked at the beginning of the hearing if they had scheduled witnesses. Both parties stated that they had not. However, at the end of the hearing, the tenant requested to have her husband called into the hearing as a witness. The

tenant's witness was called into the hearing and reiterated the tenant's claims noted above.

I confirmed with the tenant that she did not file an Application for Dispute Resolution with the Residential Tenancy Branch to address her claims that she felt the utility payment was changed through the provision of a washer and dryer to the lower rental unit occupants.

During the hearing, I explained to the parties that section 51 of the *Act* only specifies that compensation of one month's rent is payable when a tenant receives a Two Month Notice under section 49 of the *Act*. The *Act* does not provide compensation to include utility costs if the utility costs are not already included in the monthly rent. For the information of the parties, I have provided section 51 of the *Act* below:

51 (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

Analysis

Section 67 of the *Act* provides that, where an arbitrator has found that damages or loss results from a party not complying with the *Act*, regulations, or tenancy agreement, an arbitrator may determine the amount of that damage or loss and order compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* by the other party. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to section 7(2) of the *Act*.

In this case, the landlords have claimed for compensation for loss due to unpaid utility costs that were the responsibility of tenant according to the terms of the tenancy agreement.

Based on the testimony and evidence submitted by the landlord in support of their claim, I find that there is sufficient evidence that utility costs were not included in the monthly rent according to the written tenancy agreement and that there was agreement

between the parties that the tenant would pay 60% of the utility costs. Therefore, I find that the claimant has shown that the damage or loss claimed stemmed directly from a contravention of the *Act* by the other party.

I find that the claimant has established the amount of the loss claimed through the copies of the utility bills submitted into evidence.

I find that the claimant demonstrated that they tried to take reasonable measures to mitigate the loss by communicating with the tenant in email as of April 5, 2019 to advise the tenant of the outstanding utility bill cost and to request payment.

For these reasons, based on the testimony and evidence presented, on a balance of probabilities, I find that the landlords have met the burden for proving their claim for damage or loss through the test required for compensation pursuant to section 67 of the *Act* as explained at the beginning of the “Analysis” section of this Decision. As such, I find that landlords are entitled to a monetary award for unpaid utility costs of \$256.06 incurred by the tenant.

Further to this, as the landlords were successful in this application, I find that the landlords are entitled to recover the \$100.00 filing fee from the tenant.

As such, I issue a Monetary Order in the landlords’ favour of \$356.06, as explained below:

Item	Amount
Monetary award in favour of landlords for unpaid utility costs	\$256.06
Recovery of the filing fee from the tenant	\$100.00
Total Monetary Order in favour of the landlords	\$356.06

Conclusion

I grant a Monetary Order to the landlords in the amount of \$356.06.

The landlords are provided with this Order in the above terms and are required to serve this Order on the tenant as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court, where it will be 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: July 24, 2019

Residential Tenancy Branch