



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WIDSTEN PROPERTY MANAGEMENT
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL MNDCL-S

Introduction

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

- a monetary order for unpaid utilities pursuant to section 67;
- authorization to retain a portion of the tenant's security deposit in satisfaction of the monetary order requested pursuant to section 38; and,
- authorization to recover the filing fee for this application pursuant to section 72.

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. Neither party raised issues of service. I find the parties were served in accordance with the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid utilities pursuant to section 67?

Is the landlord entitled to retain a portion of the tenant's security deposit in satisfaction of the monetary order requested pursuant to section 38?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72?

Background and Evidence

The parties agreed that the tenancy agreement commence on April 15, 2014. The tenancy was initially a one-year fixed term tenancy which became a month-to-month tenancy. The tenant paid a \$450.00 security deposit which the landlord still holds.

The tenancy agreement did not include utilities with the rent. The tenancy agreement had a provision which required the tenant to maintain utilities in the rental unit.

The tenant vacated the rental unit on April 27, 2019 and she disconnected the gas and electric utilities. The tenant sent the landlord a written letter on April 30, 2019 proving notice that the tenant would end her tenancy on April 30, 2019. The tenant provided a forwarding address for the return of her security deposit in the letter. The tenant gave the landlord the keys to the rental unit on May 27, 2019.

The landlord testified that they set up gas and electric utilities accounts for the rental unit for May 2019 since the tenant cancelled her utilities. The landlord prepared a condition inspection report on move-out which stated "Utility Costs April 28 to May 31 Hold \$250" The tenant testified that she did not sign the condition inspection report on move-out because she did not agree to the deduction of \$250.00 from her security deposit.

The landlord filed this application to recover the utility costs on June 10, 2019. The landlord claimed \$500.00 in utility costs in their application. The landlord also stated in its application that it did not know the amount of utilities owed at that time.

The landlord submitted utility statements on August 16, 2019 in support of the landlord's claim for unpaid utilities. The landlord testified that the utility statement show that the tenant owes the landlord reimbursement of \$21.78 for gas utilities from April 28, 2019 to the end of the tenancy and \$12.92 for electric utilities.

The tenant argued that she is not responsible for utilities after she moved out on April 27, 2019.

Analysis

The landlord is seeking compensation for utilities paid in the tenant's behalf during the tenancy for May 2019.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss

and order that party to pay compensation to the other party. The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, the onus is on the landlord to prove entitlement to a claim for a monetary award. The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

Based upon the terms of the tenancy agreement, I find that the tenant had an obligation to maintain utility services during the tenancy. Further, even though the tenant testified that she moved out of the rental unit on April 27, 2019, she provided written notice to the landlord that she was not ending the tenancy until May 31, 2019. I find that the tenant maintained possession of the rental unit until she returned the keys on May 27, 2019 and that the tenant had an obligation to maintain her utilities through the duration of her tenancy agreement pursuant to the terms of the tenancy agreement.

Based on the utility statements provided and the landlord's testimony, I find that the landlord incurred \$21.78 for gas utilities and \$12.92 for electric utilities from April 28, 2019 to the end of the tenancy. Accordingly, I grant the landlord a monetary order for the reimbursement of utilities in the amount of \$34.70 (\$21.79 plus \$12.92).

The landlord has also requested reimbursement of the \$100.00 filing fee pursuant to section 71(2) of the *Act*. In this matter, the landlord claimed \$500.00 in damages for unpaid utilities. However, as set forth above, the landlord is only entitled to a much smaller reimbursement of \$34.70 for utilities. As such, the landlord is only partially successful in its claim and, as such, I find that the landlord is only entitled to an award of half the filing fee. Accordingly, I grant the landlord a monetary order of \$50.00 for partial reimbursement of the filing fee.

The monetary awards to the landlord may be deducted from the security deposit pursuant to section 72(2) of the Act.

Accordingly, I award the tenant a monetary award in the amount of \$365.30.

<u>Item</u>	<u>Amount</u>
Security deposit	\$450.00
Less: May 2019 gas utilities	-\$21.78
Less: May 2019 electric utilities	-\$12.92
Less: Partial reimbursement of filing fee	-\$50.00
Total owed to tenant	\$365.30

Conclusion

I grant the tenant a monetary order in the amount of **\$365.30**. If the landlord fails to comply with this order, the tenant may file the order in the Provincial Court to 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: September 23, 2019

Residential Tenancy Branch