



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HAVEN MANAGEMENT CO. LTD. DBA HAVEN PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for a monetary order to recover unpaid rent, utilities, liquidated damages and the filing fee.

Both parties attended this hearing and were given full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord was represented by their agent.

As both parties were in attendance, I confirmed service of documents. The tenant confirmed receipt of the landlord's application for dispute resolution and evidence. The tenant said that she had not filed any evidence of her own. I find that the tenant was served with the landlord's materials in accordance with sections 88 and 89 of the *Act*.

Issues to be decided

Is the landlord entitled to a monetary order to recover unpaid rent, utilities, liquidated damages and the filing fee?

Background and Evidence

The background facts are generally undisputed. The tenancy started on September 15, 2018 and ended on July 01, 2019. The monthly rent was \$2,600.00 payable in advance on the first of each month and did not include utilities. Prior to moving in the tenant paid a security deposit of \$1,300.00.

A copy of the tenancy agreement was filed into evidence. The landlord stated that the lease was a fixed term lease and relied on the wording in a clause that stated:

“If after the first year tenancy continues on a month to month basis until cancelled in accordance with the Act.”

The lease also contained a liquidated damages clause the requires the tenant to pay \$1,300.00 as liquidated damages, if the tenant ends the tenancy prior to the end of the fixed term.

The landlord stated that the tenant owed utilities in the amount of \$425.00. The tenant did not dispute the landlord’s testimony and agreed that she owed this amount in utilities.

On June 14, 2019, the tenant served the landlord with a notice to end tenancy effective July 01, 2019. The landlord stated that the tenant did not pay rent for June and filed a copy of the tenant ledger of rents paid. The ledger entries are only up to June 01, 2019. The rent was paid mostly by electronic transfers. The tenant stated that she paid rent for June 2019 on June 04, 2019, in person to a staff member in the landlord’s property management office. The tenant also added that she paid the rent in cash but did not get a receipt.

The landlord is claiming the following:

1.	Rent for June 2019	\$2,600.00
2.	Utilities	\$425.28
3.	Liquidated damages	\$1,300.00
4.	Filing fee	\$100.00
	Total	\$4,425.28

Analysis

1. Rent for June 2019 - \$2,600.00

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

In this case, the tenant stated that she paid rent for June 2019, in full on June 04, 2019 because she was having trouble paying rent electronically. The landlord denied having received rent for June and had made application on June 17, 2019 to recover unpaid rent. The tenant stated that she was not provided with a rent receipt.

The tenant was served in a timely manner with the landlord's application for dispute resolution and evidence package. Therefore I find that the tenant was put on notice that the landlord intended to claim rent for June and accordingly the tenant had the opportunity to provide evidence of her own which would support her testimony that rent for June 2019 was paid. The tenant failed to do so.

As stated above, in the absence of other evidence to support the tenant's claim that she paid rent for June 2019, she has not met her burden of proof and accordingly I find that rent in the amount of \$2,600.00 is owed to the landlord.

2. Utilities - \$425.28

The tenant agreed that she owed utilities in this amount and accordingly I award the landlord his claim.

3. Liquidated damages - \$1,300.00

Based on the wording in the tenancy agreement, it is not clear that the term of the lease is a fixed term of one year. In addition, the end date of the fixed term is not specified in the tenancy agreement. Based the tenancy agreement I find on a balance of probabilities that it is more likely than not that the parties did not have a meeting of the minds regarding the term of the agreement and it is possible that this tenancy was a month to month tenancy. Therefore I find that liquidated damages do not apply to this tenancy.

4. Filing fee - \$100.00

The landlord has proven most of his case and therefore I award the landlord the recovery of the filing fee of \$100.00.

Overall the landlord has established the following claim:

1.	Rent for June 2019	\$2,600.00
2.	Utilities	\$425.28
3.	Liquidated damages	\$0.00
4.	Filing fee	\$100.00
	Total	\$3,125.28

Overall the landlord has established a claim of \$3,125.28. I order the landlord to retain the security deposit of \$1,300.00 and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance of \$1,825.28. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord a monetary order in the amount of **\$1,825.28**.

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 30, 2019

Residential Tenancy Branch