



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* (the “Act”) for monetary compensation, to retain the security deposit towards compensation owed, and for the recovery of the filing fee paid for the Application for Dispute Resolution.

An agent for the Landlord (the “Landlord”) was present for the duration of the hearing and the Tenant called into the hearing approximately 7 minutes after it started. The parties were affirmed to be truthful in their testimony. The Tenant confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Landlord’s evidence. The Landlord confirmed receipt of a copy of the Tenant’s evidence.

Issues to be Decided

Is the Landlord entitled to monetary compensation?

Should the Landlord be authorized to retain the security deposit towards compensation found to be owing?

Should the Landlord be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

While I have considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

The parties were in agreement as to the details of the tenancy which were confirmed by the tenancy agreement submitted into evidence. The tenancy started on July 16, 2018. Monthly rent was \$1,100.00 and a security deposit of \$500.00 was paid at the start of the tenancy. The Landlord is still holding the security deposit.

The Landlord stated that the move-out inspection was conducted on July 7, 2019 which was the day the Tenant moved out. However, he stated that the tenancy officially ended on July 31, 2019. The Tenant was unsure as to the exact move out date but stated that she moved out on July 1, 2019 or July 15, 2019.

The parties both agreed that the Tenant did not provide permission for the Landlord to deduct any amount from the security deposit. They also agreed that the Tenant's forwarding address was provided in writing on the move-out inspection, although the Landlord also stated that it was provided in writing prior to this on May 28, 2019.

A copy of the Condition Inspection Report was submitted into evidence and was signed by both parties at move-in on July 16, 2018 and at move-out on July 7, 2019.

The Landlord has claimed \$597.79 for reimbursement for two utility bills for electricity for the rental unit. The Landlord stated that the tenancy agreement indicates that the Tenant is responsible for 35% of the utility bills. He described the rental unit as a three-plex with one electricity meter and referenced the tenancy agreement which states the following regarding utilities:

The tenants agree that their portion of the utilities will be 35% of the utility bill amount. Utility bills will be submitted to the tenants when upon the receipt of the original invoices from FortisBC.

The Landlord submitted copies of both electricity bills from Fortis BC into evidence. The first bill dated April 22, 2019 was for an amount of \$1,113.41 with the Tenant's portion calculated at \$389.69. The second bill dated June 21, 2019 was for an amount of \$594.58 with the Tenant's portion calculated at \$208.10. The Landlord stated that the Tenant paid her portion of all previous electricity bills during the tenancy.

The Tenant disputed that she owed any money for the utility bills. She stated her position that she was being overcharged for the electricity due to the actions of the other tenants in the residential property. She also noted that the power often did not work such that she could not use a hairdryer or other appliances without issues. The Tenant submitted evidence regarding her current electricity bills at her new rental unit and

stated that her current rental unit is larger and costs her \$50.00 to \$100.00 per month for electricity and gas.

Analysis

Section 7(1) of the *Act* states the following:

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Upon review of the tenancy agreement, I find that it outlines that the Tenant is responsible for 35% of the Fortis BC utility bills. The tenancy agreement was signed by both parties on July 16, 2018. Therefore, by not paying her portion of the utility bills as agreed upon, I find that the Tenant did not comply with the tenancy agreement and thus should compensate the Landlord.

Although the Tenant presented testimony and evidence regarding her position that she was being overcharged, I do not find that this exempts her from paying the utility bills as agreed upon. I do not find that the tenancy agreement outlines an exact amount to be paid, and instead find that the agreement was for the Tenant to pay 35% of the total bill. Therefore, regardless of whether the Tenant believes that the bill was higher than it should be, her agreement was to pay 35% of the total bill. As such, I am satisfied that the Tenant should be responsible for the bills as agreed upon.

Upon review of the two utility bills submitted into evidence, I find that both were issued during the tenancy and find that the amounts calculated are equivalent to 35% of the total bills. Therefore, I award the Landlord an amount of \$389.69 and \$208.10 for a total of \$597.79. for both bills.

Regarding the security deposit, Section 38(1) of the *Act* states that a landlord has 15 days from the later date of when the tenancy ends or when the forwarding address is provided in writing to return the deposit or file a claim against it. Although the Landlord stated that the Tenant's forwarding address was provided on May 28, 2019, the parties agreed that it was provided again on July 7, 2019. The parties were also not in agreement as to when the tenancy ended; however, as the move-out inspection report was completed on July 7, 2019, I find it likely that the tenancy ended on or around this date.

As such, I find that the Landlord had 15 days from July 7, 2019 to comply with Section 38(1) of the *Act*. As the Landlord filed the Application for Dispute Resolution on July 18, 2019, I find that the Landlord applied within the 15 days allowable. Therefore, the Landlord does not owe the Tenant double the deposit pursuant to Section 38(6) of the *Act* and may retain the security deposit towards the amount owed.

As the Landlord was successful with the application, pursuant to Section 72 of the *Act* I award the recovery of the filing fee in the amount of \$100.00. The Landlord is granted a Monetary Order in the amount outlined below:

April 22, 2019 electricity bill	\$389.69
June 21, 2019 electricity bill	\$208.10
Recovery of filing fee	\$100.00
<i>Less Security deposit</i>	<i>(\$500.00)</i>
Total owing to Landlord	\$197.79

Conclusion

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a **Monetary Order** in the amount of **\$197.79** as outlined above. The Landlord is provided with this Order in the above terms and the Tenant must be served with this Order 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 and 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: November 4, 2019

Residential Tenancy Branch