



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for a monetary order for rent and/or utilities in the amount of \$2,918.11, and to recover the \$100.00 cost of his Application filing fee.

The Landlord appeared at the teleconference hearing and gave affirmed testimony, but no one attended on behalf of the Tenants, B.S. and I.I. The teleconference phone line remained open for over fifteen minutes and was monitored throughout this time. The only person to call into the hearing was the Landlord, who indicated that he was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Landlord.

I explained the hearing process to the Landlord and gave him an opportunity to ask questions about the hearing process. During the hearing the Landlord was given the opportunity to provide his evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Tenants did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that he served the Tenants with the Notice of Hearing documents by Canada Post registered mail, sent on November 22, 2019. The Landlord provided Canada Post tracking numbers for the packages sent to each Respondent, as evidence of service. I find that the Tenants were deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Landlord in the absence of the Tenants.

Preliminary and Procedural Matters

The Landlord provided the Parties' email addresses in the Application and confirmed this information at the outset of the hearing. The Landlord also confirmed his understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

In the hearing, the Landlord confirmed the evidence in the tenancy agreement, which states that the periodic tenancy began on December 1, 2009, with a monthly rent of \$1,325.00, due on the last day of each month. The tenancy agreement indicates that the Tenants paid the Landlord a security deposit of \$650.00, and no pet damage deposit.

The Landlord submitted a copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated August 2, 2019 ("10 Day Notice") that he served on the Tenants, for their failure to pay \$1,325.00 in rent that was due on July 31, 2019 for August 2019 rent. The 10 Day Notice was signed and dated August 2, 2019, it had the rental unit address, it was served on the Tenants in person on August 2, 2019, and it had an effective vacancy date of August 12, 2019.

In the hearing, the Landlord confirmed that the Tenants did not pay the rent owing for August or September 2019, and that they did not move out until September 8, 2019. The Landlord submitted a copy of a statement he said the Tenants' signed dated September 8, 2019, which states: "This is to confirm that [the Tenant B.S. gave] me the suite keys on Sep-08-2019 and completely moved out of my house on Sep-8-2019." This document was signed by the Tenant, B.S., and the Landlord.

The Landlord said the Tenants did not give him their forwarding address; however, he said he knows where they moved to, as they had just bought a new house. He said he had seen the Tenants when he drove by, and he said they ignored him and went inside

when he attended to post notices on their door.

In his submissions, the Landlord indicated that he had a new tenant ready to move in on September 1, 2019; however, this person cancelled the lease, because the Tenants had not yet moved out of the rental unit by that date.

The Landlord said that the Tenants owe him for unpaid rent and utilities, as set out in a monetary order worksheet ("MOW"), as follows:

	Receipt/Estimate From	For	Amount
1	August 2019	August rent	\$1,325.00
2	September 2019	September rent	\$1,325.00
3	July & August hydro bill	Electricity	\$181.66
4	August gas bill	Gas	\$23.11
5	September hydro bill	Electricity	\$45.22
6	September gas bill	Gas	\$18.12
		Total monetary order claim	\$2,918.11

The Landlord said that the Tenants were responsible for paying sixty percent of the utility bills for the rental unit, as set out in the tenancy agreement. However, he said that the Tenants did not pay anything toward electricity or gas bills owing at the rental unit for July 2019 through to and including September 2019. The Landlord said that he sent the Tenants letters demanding this payment in the fall of 2019, but they did not pay him anything. He said he posted demands on their door a few times, but had no response from them.

The Landlord submitted bills for electricity and gas, sixty percent of which coincides with the amounts claimed by the Landlord, as set out on the MOW. The Landlord said he sent the Tenants copies of these bills, in addition to demanding that they pay him their share owing.

Analysis

Based on the documentary evidence and the testimony provided during the hearing,

and on a balance of probabilities, I find the following.

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due.

Section 26 of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent. In the hearing, the Landlord said he was owed \$2,650.00 in unpaid rent as of September 2, 2019.

The Tenants did not attend the hearing to provide testimony as to why the rent was not paid, and they did not provide any documentary evidence establishing that they had a right under the Act to deduct all or a portion of the \$2,650.00 in rent owing. I grant the Landlord recovery of unpaid rent from the Tenants in the amount of **\$2,650.00**, pursuant to section 67 of the Act.

Further, section 46(6) states:

46 (6) 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,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

I find that the undisputed evidence before me is that the Landlord gave the Tenants notice of the amount of utilities they owed him under the tenancy agreement and pursuant to the relevant, respective invoices. I find that the Tenants had over 30 days to pay the Landlord this debt, but that they have not done so to date. Based on the undisputed evidence before me overall, I find that the Tenants owe the Landlord \$268.11 in unpaid utilities, which I find may be treated as unpaid rent, pursuant to section 46(6) of the Act. I grant the Landlord an additional **\$268.11** of unpaid rent/utilities from the Tenants, pursuant to section 67 of the Act.

Given his success in this Application, I also award the Landlord with recovery of his **\$100.00** Application filing fee.

Summary and Set Off

I find that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenants' security deposit of \$650.00 in partial satisfaction of the Landlord's monetary awards.

I authorize the Landlord to retain the Tenants' **\$650.00** security deposit. I award the Landlord with a monetary order for the remaining amount of **\$2,368.11**.

	For	Amount
1	August and September rent owing	\$2,650.00
2	August and September utilities owing	\$268.11
3	Recovery of the Application filing fee	\$100.00
	Sub-total	\$3,018.11
4	Less security deposit	\$650.00
	Total monetary order	\$2,368.11

Conclusion

The Landlord is successful in his claim for recovery of unpaid rent and utilities from the Tenants, as he provided sufficient evidence that the Tenants failed to pay rent and utilities owing for the rental unit for August and September 2019. The Landlord is also awarded recovery of his \$100.00 Application filing fee.

The Landlord has established a monetary claim of \$3,018.11. I authorize the Landlord to retain the Tenants' full security deposit of \$650.00 in partial satisfaction of the claim. The Landlord has been granted a monetary order under section 67 for the balance due by the Tenants to the Landlord in the amount of **\$2,368.11**.

This Order must be served on the Tenants by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: April 15, 2020