



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, 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 damage or compensation for damage under the Act in the amount of \$1,290.52, retaining the security deposit for this claim; and for a monetary order for unpaid rent and/or utilities in the amount of \$6,050.00; and to recover the \$100.00 cost of his Application filing fee.

The Landlord and an agent for the Landlord, D.K. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenant. The teleconference phone line remained open for over 40 minutes and was monitored throughout this time. The only persons to call into the hearing were the Landlord and the Agent, who indicated that they were ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only persons on the call, besides me, were the Landlord and the Agent.

I explained the hearing process to the Landlord and Agent and gave them 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 "(Rules)"; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Tenant 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 Tenant with the Notice of Hearing documents by Canada Post registered mail, sent on March 20, 2020. The Landlord provided Canada Post tracking numbers as evidence of service. I find on a balance of probabilities that

the Tenant was 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 and the Agent in the absence of the Tenant.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

The Landlord said that he had not gathered all the debts owed him by the Tenant, when he first applied for dispute resolution. However, he submitted an Amendment to his Application to include up-to-date costs incurred by the Landlord and debts owed by the Tenant to the Landlord. The Landlord requested that his Application for a monetary order be increased to this amount to reflect the changing amount of this debt (continued unpaid utilities and rent).

Pursuant to Rule 4.2 and section 64(3)(c) of the Act, I amend the Application for dispute resolution to correct the amount of the monetary order sought, reflecting the ongoing failure of the Tenant to pay his monthly rent and utilities owing. I find no prejudice to the Tenant, as he is aware of the ongoing rent and utilities costs he owes, therefore, he could have anticipated that the Landlord would claim reimbursement for the full amount of owing. Accordingly, I find it reasonable to amend the amount of the monetary order sought by the Landlord from the Tenant from \$7,440.52 to \$8,990.52, as set out in the Landlord's Amendment and evidence.

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

The Landlord's testimony, along with the tenancy agreement indicate that the fixed term tenancy began on September 27, 2019 and ran until March 27, 2020. It then operated on a month-to-month basis. The Landlord said the Tenant owed him a monthly rent of \$1,650.00, due on the 27th day of each month prior to the rental month. The Landlord confirmed that the Tenant paid the Landlord a security deposit of \$825.00, and a pet

damage deposit of \$400.00. The Landlord said that the Tenant moved out on May 3, 2020, and that he provided his forwarding address to the Landlord in a text message.

The Landlord said the Tenant owes him **\$7,700.00** in unpaid rent and **\$1,290.52** in unpaid utilities for a total of \$7,340.52. The Landlord provided tables of the amounts of rent and utilities the Tenant paid and still owes in each category.

RENT OWING:

Date Rent Owed	Date Rent Paid	Rent Amount	Rent Paid	Rent Unpaid that month	Combined Rent Owning
Nov. 27/19	Dec 5/19	\$1,650.00	\$1,300.00	\$350.00	\$350.00
Dec. 27/19	Jan 5/20	\$1,650.00	\$200.00	\$1,450.00	\$1,800.00
Jan 27/20	Feb 2/20	\$1,650.00	\$700.00	\$950.00	\$2,750.00
Feb 27/20	n/a	\$1,650.00	\$0.00	\$1,650.00	\$4,400.00
Mar 27/20	n/a	\$1,650.00	\$0.00	\$1,650.00	\$6,050.00
Apr 27/20	n/a	\$1,650.00	\$0.00	\$1,650.00	\$7,700.00

I note that the Landlord's amended amount of rent owing did not include the rent owing as of April 27, 2020, which the Landlord said in the hearing that the Tenant did not pay. As noted above, the Tenant could have anticipated that the Landlord would claim reimbursement for this amount owing.

UTILITIES OWING:

The tenancy agreement indicates that the Tenant is responsible for heat and electricity in the rental unit. It also states: "Share utility (gas and hydro), owner 50% by two tenants, 25% each." The tenancy agreement indicates that the rental unit was rented to the Tenants, W.L. and C.D.

The Landlord submitted a letter to the Tenant, W.L., dated April 4, 2020, in which he advised W.L. that he owed \$6,050.00 in unpaid rent and \$1,290.52 in unpaid utilities. He requested that the Tenant pay the amounts owing as soon as possible. The Landlord said the Tenant did not respond to this letter.

The following chart sets out the amount of utilities that the Tenants were liable to pay, and it indicates that they did not pay any utilities for the duration of the tenancy.

	Bill Time	Gas	Hydro	Remarks	50% Gas	50% Hydro	Total Utilities Owning
1	October/19	\$65.18			\$32.59		\$59.75
2	November/19	\$99.03	\$445.84	Oct/19 – Nov/19	\$49.52	\$168.10 \$222.92	\$295.72
3	December/19	\$136.00			\$68.00		\$83.49
4	January/20	\$129.62	\$611.47	Dec/19 – Jan/20	\$64.81	\$305.74	\$370.55
5	February/20	\$206.22			\$103.11		\$103.11
6	March/20	\$159.05	\$838.23		\$79.53	\$419.12	
7	April/20	\$			\$		n/a
8	May/20	\$	\$		\$		n/a
				TOTALS:	\$397.56	\$892.96 \$947.78	\$1,290.52 \$1,345.34

I find that the Landlord erred in his calculation of the hydro amount owed him by the Tenants in November 2019, as fifty percent of \$445.84 is \$222.92, not \$168.10 that the Landlord claimed. Accordingly, I find that the final totals are off by \$54.82, the difference between these two amounts.

As noted above, the Landlord advised the Tenant of the amount of utilities owing in a letter dated April 4, 2020 (“Utilities Letter”). While the Landlord understated this amount by \$54.82, I find that the Tenant could have discovered this error by checking the Landlord’s math in the Landlord’s chart. Accordingly, I find it reasonable that the Tenant could have known how much was owing in actual fact by checking the Landlord’s calculations in the documentary evidence submitted to the RTB and served on the Tenant.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 26 of the Act states: “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 this Act to deduct all or a portion of the rent.” There is no evidence before me that the Tenant had a right to deduct any portion of the rent from the monthly rent due to the Landlord.

Pursuant to section 26 of the Act, and based on the Landlord’s undisputed evidence before me, I award the Landlord with **\$7,700.00** from the Tenant in reimbursement for the unpaid rent owing, pursuant to section 67 of the Act.

Section 46 (6) of the Act states:

(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.

Further, Policy Guideline #13 states:

B. TENANTS AND CO-TENANTS

A tenant is a person who has entered a tenancy agreement to rent a rental unit.... There may be more than one tenant; co-tenants are two or more tenants who rent the same rental unit or site under the same tenancy agreement. Generally, co-tenants have equal rights under their agreement and are jointly and severally responsible for meeting its terms, unless the tenancy agreement states otherwise. ‘Jointly and severally’ means that all co-tenants are responsible, both as one group and as individuals, for complying with the terms of the tenancy agreement.

C. PAYMENT OF RENT

Co-tenants are jointly and severally responsible for payment of rent when it is due. Example: If John and Susan sign a single tenancy agreement together as co-tenants to pay \$1800 dollars in rent per month, then John and Susan are both equally responsible to ensure that this amount is paid each month. If Susan is unable to pay her portion of the rent, John must pay the full amount. If he were to

only pay his half of the rent to the landlord, the landlord could serve a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities and evict both John and Susan because the full amount of rent was not paid. The onus is on the tenants to ensure that the full amount of rent is paid when due.

As a result of the joint and several liability of the co-Tenants, the Landlord is within his rights to claim their joint debt from one of them, as per his claim against the Tenant, W.L.

Based on the evidence in the Utilities Letter and the Landlord's testimony that these amounts remain unpaid, I find that the Landlord may treat the unpaid utilities as unpaid rent. I, therefore, award the Landlord with **\$1,345.34** in additional unpaid rent pursuant to section 67 of the Act.

Given the Landlord's success in his Application, I also award him with recovery of the **\$100.00** Application filing fee, pursuant to section 72 of the Act.

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 Tenant's security deposit of \$825.00 and pet damage deposit of \$400.00 in partial satisfaction of the Landlord's monetary claim. I authorize the Landlord to retain these deposits in this regard.

Rent awarded	\$7,700.00
Utilities awarded	\$1,345.34
Filing fee	<u>\$ 100.00</u>
Sub-total	\$9,145.34
Less Deposits	<u>(\$1,225.00)</u>
Amount owing	<u>\$7,920.34</u>

Based on the evidence and authorities before me, I grant the Landlord a Monetary Order in the amount owing after set-off of **\$7,920.34** from the Tenant.

Conclusion

The Landlord's claim for compensation from the Tenant is successful, as the Tenant did not attend the hearing to dispute the merits of the Landlord's Application. The Landlord has established a monetary claim of \$9,045.34 in unpaid rent and utilities. I authorize

the Landlord to retain the Tenant's full security and pet damage deposits of \$1,225.00 in partial satisfaction of this award. The Landlord has been granted a Monetary Order under section 67 for the balance due by the Tenant to the Landlord in the amount of **\$7,920.34.**

This Order must be served on the Tenant 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: June 18, 2020

Residential Tenancy Branch