



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, 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 unpaid rent and utilities, retaining the security deposit to apply to this claim; and to recover the \$100.00 cost of their Application filing fee.

The Landlord and his assistant and translator, F.J. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony; however, no one attended on behalf of the Tenant. The teleconference phone line remained open for over 30 minutes and was monitored throughout this time. The only persons to call into the hearing were the Landlord and his 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 provided his evidence orally and responded 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 each Tenant with the Notice of Hearing documents and evidentiary submissions by Canada Post registered mail, sent on March 20, 2020. The Landlord provided Canada Post tracking numbers as evidence of service. I find 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 in the absence of the Tenant.

Preliminary and Procedural Matters

The Landlord provided his email address in the Application and the Tenant's email address in the hearing. He confirmed his understanding that the Decision would be emailed to both Parties, and any Orders would be sent to the appropriate Party.

At the outset of the hearing, I asked the Agent for the Landlord's name in this matter, as the Landlord identified on the Application was different than that in one of the tenancy agreements submitted. The Agent advised me that the Landlord in the hearing was the landlord on the most current tenancy agreement, and the other landlord identified is the current Landlord's sister.

Further, the Landlord said that the tenant, J.S., on the first agreement is the spouse of the tenant on the second tenancy agreement. The Landlord on the second tenancy agreement was in the hearing, with an assistant and translator. The details of the two tenancy agreements are set out further below.

Accordingly, I have amended the Parties' names in the Application and style of cause to reflect the Parties on the most recent tenancy agreement, pursuant to section 64(3)(c) of the Act and Rule 4.2.

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 their Application filing fee?

Background and Evidence

The Landlord submitted two tenancy agreements and confirmed the following details of these tenancies. The first fixed term tenancy began on March 15, 2015 and ran until September 14, 2015; it stated that the tenancy ended on this date. The parties to the first tenancy agreement were the landlord, J.Q.L., the current Landlord's sister, and the tenant, J.S., the current Tenant's spouse. I find that this tenancy ended and the parties to it are not before me in this proceeding.

The second fixed term tenancy ran from July 15, 2019 to January 14, 2020, and was to continue on a month-to-month basis thereafter. The Parties to this agreement are the

Landlord, D.J.L., and the Tenant, L.S. The tenancy agreement sets out that the Tenant paid the Landlord a monthly rent of \$3,485.00, due on the 15th day of each month, and a security deposit of \$1,650.00, and no pet damage deposit. Accordingly, as noted above, the Landlord, D.J.L., and the Tenant, L.S., are Parties to the most current tenancy agreement, and they are, therefore, the Parties in the matter before me.

The Landlord said that the Tenant texted him in December 2019 to say that she intended to end the tenancy on January 14, 2020, but she did not provide anything in writing in this regard. The Landlord said that the Tenant vacated the rental unit on January 14, 2020, and that she would not participate in a move-out condition inspection, nor would she enter the house for the inspection or sign any documents in this regard.

The Landlord said that upon move-in, the Tenant had an agent who brought a condition inspection report ("CIR") to complete, but that she did not give the Landlord a copy of the CIR. The Landlord said he contacted the agent more recently for a copy of the CIR; however, this agent said she was no longer in this business and that she had not retained any documentation such as the CIR.

The Landlord seeks the following compensation in his Application, as set out in the monetary order worksheet:

	Receipt/Estimate From	For	Amount Owning
1	Utility bill from District -estimate → -estimate →	Unpaid utilities: -\$515.70 for Oct 1 – Dec 31/19 -\$85.95 for Jan 1 – 14, 2020 -\$64.00 March 15 – 31, 2015	\$665.65
2	Copy of rent cheque	Unpaid rent outstanding	\$353.85
3	RTB	Application filing fee	\$100.00
		Total monetary order claim	\$1,119.50

#1 Unpaid Utilities → \$665.65

The Landlord's claim for unpaid utilities comes from three elements. First, the Landlord has claimed \$515.70 as coming from a District utilities bill for October 1 through December 31, 2019, which was due on February 28, 2020. The Landlord said that he

emailed the bill to the Tenant, but that she did not pay the amount owing to the District.

The second portion of the full amount claimed is the Landlord's estimate of the utilities owing by the Tenant for the final weeks of the tenancy from January 1 through January 14, 2020. He said this is based on the previous billing period average. The Landlord claimed \$85.95 for this, based on taking one-sixth of the amount of the previous billing period.

The third portion of this claim is the Landlord's estimate of the utilities owing by the Tenant for the first two weeks of the original tenancy, from March 15 through 31, 2015. The Landlord submitted a copy of the utilities invoice for the first quarter of 2015, which bills the utilities for that period at \$386.06. Again, the Landlord divided the amount for this quarter by one-sixth to calculate an approximate amount of utilities owing in a two-week period. The Landlord allocated this amount to the then tenants' first two weeks of the original tenancy: $1/6 \times \$386.06 = \64.34 .

In terms of why the Landlord took five years to claim this amount from this Tenant, he said:

Normally utilities are billed quarterly, so they are always behind by two weeks. They actually started the tenancy on March 15, 2015. Therefore, there would always be a fragment of 14 days, so each time we moved to a new tenancy period, we always had a 14-day backlog. They ended the tenancy earlier on the 14th, so still a fragment is carried on.

#2 Unpaid Rent → \$353.85

The Landlord said that the Tenant deducted this amount that she paid a pest control company to get rid of mice in the backyard in 2017. However, the Landlord said that there was no evidence of mice being in the backyard or that the Tenant paid a pest control company anything. The Landlord also said that he was not responsible for maintaining the yard during that timeframe, and that he never agreed to pay for this service.

The Landlord submitted a copy of a cheque he received on September 15, 2017 for \$2,946.15 from someone with a note on the cheque saying: "Rent minus [pest control company name]".

Analysis

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

Before the Landlord testified, I advised him as to how I would be analyzing the evidence presented to me. I told him that a person who applies for compensation against another person has the burden of proving their claim on a balance of probabilities. Policy Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, the Landlord must prove:

1. That the Tenant violated the Act, regulations, or tenancy agreement;
2. That the violation caused the Landlord to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the Landlord did what was reasonable to minimize the damage or loss.

("Test")

#1 Unpaid Utilities → \$665.65

The Landlord's undisputed evidence is that the Tenant did not pay the utilities bill for the last quarter of 2019, which caused the Landlord to incur this cost. I find that the Landlord proved the value of this cost by submitting a copy of the utilities bill from the District. The bill was for \$515.70, if paid by the due date of February 28, 2020, but the amount owing was \$573.00, if paid after that date.

I note that the utilities bill was in the Landlord's name and, therefore, it was in his best interest to pay it by the due date, in case he could not recover this cost from the Tenant. I find that this demonstrates that the Landlord was mitigating or minimizing his cost, as is required by step four of the Test. I find that the Landlord has proven this portion of this claim on a balance of probabilities, and therefore, I award the Landlord with recovery of **\$515.70** from the Tenant, pursuant to section 67 of the Act.

The second element of this claim is the utilities for the last two weeks of the tenancy from January 1 through 14, 2020. The Landlord said that he estimated this amount from the previous utilities bill by multiplying the previous quarterly amount by one-sixth. However, I find that the Tenant did not live in the rental unit for a full sixth of the quarter. Rather, I find it more accurate to calculate the amount owing on the basis of a daily

average. When I do the following calculations, I come up with a lower average amount than what the Landlord claimed, which I find is appropriate given the portion of the first quarter in which the Tenant lived in the rental unit.

There were 92 days between October 1 and December 31, 2019. The amount billed of \$515.70 divided by 92 equals \$5.61 per day. 14 days at \$5.61 per day equals \$78.54, whereas, the Landlord claimed \$85.95. Although the difference is small, I find that the Landlord overcharged the Tenant with his calculation.

Further, according to the billing date of the District for the fourth quarter of 2019, the first quarter of 2020 should have been billed on April 30, 2020, with a due date on May 31, 2020. I find that the Landlord had this bill in plenty of time to calculate the first 14 days of January more accurately than by using the previous quarter as a basis of this calculation. As a result, and given these considerations, I find that the Landlord did not provide sufficient evidence to prove the value of this element of the claim on a balance of probabilities. I, therefore, dismiss this portion of the Landlord's first claim without leave to reapply.

Finally, the Landlord has claimed an amount owing by the Tenant for utilities in the first 17 days of the previous tenancy, which were March 15 through 31, 2015. However, the Landlord in the claim before me was not the Landlord in the 2015 tenancy and, therefore, I find that this Landlord does not have standing to make such a claim, as he was not a Party to that tenancy. As a result, I dismiss this aspect of the Landlord's claim without leave to reapply.

#2 Unpaid Rent → \$353.85

Again, the Landlord has claimed an amount owing for a time period prior to the start of the tenancy that he had with the Tenant, L.S. Accordingly, I find that the Landlord is without standing for this claim, as there is no evidence before me that he was the landlord of this property for the time period in question – September 2017. As a result, I dismiss this claim without leave to reapply.

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 \$1,650.00 in full satisfaction of the Landlord's

monetary claim.

	Receipt/Estimate From	For	Amount Awarded
1	Utility bill from District -estimate → -estimate →	Unpaid utilities: -\$515.70 for Oct 1 – Dec 31/19 -\$85.95 for Jan 1 – 14, 2020 -\$64 March 15 – 31, 2015	\$515.70
2	Copy of rent cheque	Unpaid rent	\$0.00
		Total monetary order claim	\$515.70

I find that the Landlord has established a total monetary claim in the amount of **\$515.70**, for recovery of the utilities owing by the Tenant to the Landlord for the last quarter of 2019, pursuant to section 67 of the Act. Given his partial success in this Application, I also award the Landlord recovery of the **\$100.00** Application filing fee, pursuant to section 72 of the Act.

The Landlord is authorized to deduct this amount from the Tenant's \$1,650.00 security deposit in full satisfaction of the Landlord's \$615.70 award. The Landlord is ordered to return the remaining \$1,034.30 of the security deposit to the Tenant as soon as possible. I grant the Tenant a Monetary Order for the remainder owing from the Landlord in the amount of \$1,034.30, the remainder of the security deposit outstanding, pursuant to section 67 of the Act.

Conclusion

The Landlord's claim for compensation for damage or loss against the Tenant is partially successful. The Landlord provided sufficient evidence to meet his burden of proof in this matter for recovery of \$515.70 in utilities owing. I find that the Landlord did not have standing to pursue other claims and/or did not provide sufficient evidence to meet his burden of proof in this matter. However, given the Landlord's partial success in his Application, I also award him recovery of the \$100.00 Application filing fee.

The Landlord has established a monetary claim of **\$615.70**. I authorize the Landlord to retain \$615.70 of the Tenant's security damage deposit in full satisfaction of his award.

The Tenant is granted a Monetary Order under section 67 of the Act for the balance due by the Landlord to the Tenant in the amount of **\$1,034.30**.

This Order must be served on the Landlord by the Tenant 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: July 30, 2020

Residential Tenancy Branch