



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL MNRL FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- a monetary order for unpaid rent and utilities in the amount of \$5,431.85 pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

Landlord JA attended the hearing on behalf of both landlords. Tenant JB attended the hearing on behalf of both tenants. Each was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

JA testified, and JB confirmed, that the landlords served the landlords with the notice of dispute resolution form and supporting evidence package. The tenants did not provide any documentary evidence in support of their response to the landlords' application. I find that all parties have been served with the required documents in accordance with the Act.

Issues to be Decided

Are the landlords entitled to:

- 1) a monetary order for \$5,431.85; and
- 2) recover their filing fee;

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written tenancy agreement starting September 1, 2019. Monthly rent was \$2,200 and was payable on the first of each month. The tenants were

obligated to pay 60% of the electrical bill. The tenants paid the landlords a security deposit of \$1,100 and a pet damage deposit of \$250.

The parties have been involved in at least two other matters before the Residential Tenancy Branch. On April 6, 2020, the parties attended a hearing following which the presiding arbitrator issued an order of possession to the landlords due to non-payment of March 2020 rent effective two days after service on the tenants (the “**Order of Possession**”). I note that, due to Ministerial Order M089 made March 30, 2020, the Order of Possession was not enforceable until after the Ministerial Order was lifted.

The tenants continued to reside in the rental unit following being served with the Order of Possession. Neither party gave evidence as to the exact date the Order of Possession was served on the tenants, but I understand that it was sometime between April 6 and May 14, 2020.

On May 14, 2020, the landlords attended a hearing on the issue of unpaid rent for March, April, and May 2020, and unpaid utilities for February 15 to April 15, 2020. The tenants did not attend. The presiding arbitrator granted the landlords a monetary order for the amounts sought and permitted the landlords to retain the security and pet damage deposits in partial satisfaction of the monetary order made.

At the present hearing, the landlords are seeking a monetary order for \$5,431.85, representing the following:

June 2020 Rent	\$2,200.00
July 2020 Rent	\$2,200.00
Electrical Bill Dec 15, 2019 to Feb 15 2020	\$563.37
Electrical Bill Apr 15, 2020 to Jun 15, 2020	\$468.48
Total	\$5,431.85

JA testified that the tenants did not vacate the rental unit in accordance with the Order of Possession. As the Ministerial Order M089 prevented the landlords from enforcing the Order of Possession, there was little the landlords could do to have the tenants removed from the rental unit.

On June 24, 2020, the Ministerial Order M089 was repealed and was replaced by Ministerial Order M195. This new Ministerial Order permitted the Order of Possession to be enforced.

The landlords enforced the Order of Possession on July 7, 2020. Bailiffs attended the rental unit and removed the tenants and their possessions from the rental unit.

JA testified that the tenants did not pay any rent for the months of June or July 2020. He argued that the landlords are entitled to full payment of rent for these months as rent is due on the first of each month.

JB did not dispute that the tenants did not pay any rent for June or July 2020. However, he argued that the tenants should not be responsible for paying the full amount of July 2020's rent, as they were removed from the rental unit on July 7, 2020. He argued that the tenants should pay a *pro rata* amount of rent for that month (that is, seven days' worth of rent).

JA testified that the tenants did not pay their electrical bills for the periods of time between December 15, 2019 to February 15, 2020 and April 15, 2020 to June 15, 2020. He provided copies on Fortis BC bills for these periods. He calculates the amounts owed by the tenants as follows:

Period of Time	Fortis BC Bill	Tenants' Share (60%)
December 15, 2019 to February 15, 2020	\$938.96	\$563.38
April 15, 2020 to June 15, 2020	\$780.80	\$468.48
	Total	\$1,031.86

JB did not deny that these bills were unpaid. Rather he testified that the landlords never delivered these bills to the tenants.

JB testified that the tenants were unable to pay the rent claimed by the landlords due to financial hardship caused by the COVID-19 pandemic.

Analysis

I must first address JB's testimony regarding the reasons for non-payment of rent. While I am sympathetic to the hardship suffered by the tenants due to the COVID-19 pandemic, there is nothing in the Act that allows for an absolution of a tenants' obligation to pay rent due this hardship. As such, I must apply the Act, as written, to the facts presented at the hearing.

1. Utilities

There is no dispute that the amounts claimed by the landlords have not been paid by the tenants. The tenants had possession of the rental unit for the periods of time the landlords claim compensation for.

The tenancy agreement obligates the tenants to pay 60% of the utilities' bills. The tenants did not pay they as obligated. Accordingly, they have breached the tenancy agreement, and the landlord is entitled to compensation in the amount of the tenants' share of the unpaid bills (\$1,031.86).

I note that the landlords' alleged failure to deliver the bills to the tenants' does not remove the tenants' obligation of paying the bills altogether. Rather, it might change the date when these tenants could be reasonably expected to pay the bills (that is, the

landlords cannot expect payment of the bills until after they have been delivered to the tenants). In this case, the tenants have now been provided with the utilities bills, and, as such, are responsible for paying them.

2. Outstanding Rent

Section 44(1)(f) of the Act states:

How a tenancy ends

44(1) A tenancy ends only if one or more of the following applies:

(f) the director orders that the tenancy is ended;

When an order of possession is issued by an arbitrator, and the tenants do not comply with it, a tenancy ends on the date the order of possession states that a landlord is entitled to vacant possession of a rental unit.

In this case, the landlords were entitled to vacant possession of the rental unit two days after the Order of Possession was served on the tenants. As stated above, this was sometime between April 6 and May 14, 2020.

Once the landlords became entitled to vacant possession of the rental unit, and the tenants refused to provide it, as ordered to by the Order of Possession, the tenants became “overholding tenants”, per section 57 of the Act, which states:

What happens if a tenant does not leave when tenancy ended

57(1) In this section:

[...]

"overholding tenant" means a tenant who continues to occupy a rental unit after the tenant's tenancy is ended.

[...]

(3) A landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

Based on this, and on the testimony of the parties, I find that the tenants have been “overholding tenants” since at least May 14, 2020. As such, they are obligated to pay the landlords compensation for the period of time they remain in the rental unit after the tenancy has ended.

As the tenants remained in the rental unit for the entire month of June 2020, they must compensate the landlords \$2,200 (the full amount of rent for that month). As the tenants only occupied the rental unit for seven days in July 2020, they are only obligated to compensate the landlord for those seven days. The *per diem* rate of occupancy of the rental unit is \$70.97 (\$2,200 per month/31 days = \$70.97/day). The tenants must

therefore pay the landlords \$496.79 ($\$70.97/\text{day} \times 7 \text{ days} = \496.79) in compensation for the time they remained in the rental unit in July 2020.

Despite the fact the landlords have been substantially successful in this application, I decline to order that the tenants repay them their filing fee. The tenants agreed with the bulk of the landlords' positions and their main dispute with the landlords' claim was that their obligation to pay for all of July 2020 rent. On this issue, the tenants were successful. As such, I find that their opposition to this application was justified.

Conclusion

Pursuant to section 67 of the Act, I order that the tenants pay the landlords \$3,728.65, representing the following:

Overholding for June 2020	\$2,200.00
Overholding for July 2020	\$496.79
Electrical for Dec 15, 2019 to Feb 15 2020	\$563.38
Electrical for Apr 15, 2020 to Jun 15, 2020	\$468.48
Total	\$3,728.65

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: July 23, 2020

Residential Tenancy Branch