



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, 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 damage or loss under the Act in the amount of \$413.42, and a monetary order for unpaid rent in the amount of \$3,950.00, retaining the security deposit to apply to these claims; and to recover the \$100.00 cost of her Application filing fee.

The Landlord 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 fifteen minutes and was monitored throughout this time. The only person to call into the hearing was the Landlord, who indicated that she 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 her an opportunity to ask questions about the hearing process. During the hearing, the Landlord was given the opportunity to provide her 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 she served the Tenant with the Notice of Hearing documents by email sent on March 28, 2020. The Landlord said that the Tenant responded to this email and, therefore, the Landlord knows that she received it. Based on the evidence before me, I find that the Tenant was 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 the Parties' email addresses in the Application documents and confirmed them at the outset of the hearing. The Landlord also confirmed her 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

The Landlord provided a copy of the Parties' tenancy agreement, which set out the following details of the tenancy: The tenancy began on September 29, 2018, with a monthly rent of \$1,650.00, due on the first day of each month. The Tenant paid the Landlord a security deposit of \$825.00, and no pet damage deposit.

The Landlord said the tenancy ended when the Tenant moved out on February 14, 2020.

#1 Utilities Payments Owing → \$413.42

The Landlord's first claim was for the recovery of the electricity bill left outstanding from the tenancy.

In the hearing, the Landlord said:

In tenancy agreement, [the Tenant] agreed to call [the electricity company] and take over the account. I had it in my name, and she signed agreeing to take it over. She never called to take it over. She apologized and said she couldn't figure out the system. I weighed the options; she never took it on, but she had agreed to pay it, but she never did.

The Landlord directed my attention to the second point in the Addendum to the tenancy Agreement, which states:

2. Tenants are responsible for contacting BC Hydro to take over payment of hydro.

The Addendum is not signed or initialled by the Parties; however, the tenancy agreement is signed and dated by the Parties, and it indicates that there is one addendum with seven points on it, which coincides with the Addendum submitted into evidence.

The Landlord submitted a copy of a letter she said she gave to the Tenant in person on February 19, 2020, entitled “End of tenancy notice, February 19, 2020” (“Letter”). The first point on this Letter states: “the tenant never assumed responsibility for BC Hydro (as per Addendum #2 of the tenancy agreement signed September 2019) leaving a debt to the owner of \$413.42.”

At the end of this Letter, it states:

The tenant is asked to take the following actions:

...

- pay the amount owing (minus the security deposit) . . .
Hydro \$413.42

The Landlord said that the Tenant did not pay her any amount owing in the Letter, including the electricity bill.

#2 Recovery of Unpaid Rent → \$3,950.00

In the hearing, the Landlord said that the Tenant failed to pay the following amounts in rent over the course of the tenancy:

Month	Amount Owing	Amount Paid	Unpaid Rent
February 2019	\$1,650.00	\$0.00	\$1,650.00
January 2020	\$1,650.00	\$1,000.00	\$ 650.00
February 2020	\$1,650.00	\$0.00	\$1,650.00
		TOTAL	\$3,950.00

The Landlord said:

I want to acknowledge that she never disputed she owes me the money. She's been struggling financially. I was willing to look at a long-term payment plan; however, I am concerned that she's trying to walk away from her debt. Her pattern of not following up, and acknowledging, and apologizing, and not having an action plan concerns me. She said she'd pay this amount on this date . . . and this amount on this date, but she didn't ever pay anything.

The Landlord also submitted text messages and emails exchanged between the Parties, in which the Tenant acknowledged that she owes the Landlord unpaid rent for these months.

Analysis

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

#1 Utilities Payments Owing → \$413.42

Section 46(6) of the Act sets out that a landlord may consider unpaid utilities as unpaid rent, if the landlord has served the tenant with a written demand for payment of them, and if the utility charges are unpaid for more than thirty days after receipt of the written demand.

The Tenant was given well over thirty days after receipt of the Letter to pay the electricity bill outstanding from the tenancy. The RTB hearing took place over five months after the Landlord delivered the Letter to the Tenant. As a result, and pursuant to section 46(6) of the Act, I find that the Landlord is entitled to treat the unpaid utility amount as unpaid rent.

Given the undisputed evidence before me and on a balance of probabilities, I award the Landlord with **\$413.42** in unpaid utilities, pursuant to section 67 of the Act.

#2 Recovery of Unpaid Rent → \$3,950.00

Based on the undisputed evidence before me, overall, I find that the Tenant failed to pay the Landlord \$3,950.00 in rent over the course of the tenancy. I, therefore, award the Landlord with recovery of **\$3,950.00** from the Tenant in unpaid rent.

Summary and Offset

The Landlord is awarded \$413.42 for unpaid utilities and \$3,950.00 in unpaid rent from the Tenant for a total of \$4,363.42, pursuant to section 67 of the Act. I also award the Landlord with recovery of the \$100.00 Application filing fee, pursuant to section 72 of the Act.

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 in partial satisfaction of the Landlord's monetary claim.

Claim	Amount
Unpaid Utilities	\$ 413.42
Unpaid Rent	\$3,950.00
RTB filing fee	\$ 100.00
Sub-total	\$4,463.42
Less security deposit	(\$ 825.00)
TOTAL	\$3,638.42

I grant the Landlord a Monetary Order pursuant to section 67 of the Act for the balance owing by the Tenant to the Landlord in the amount of **\$3,638.42**.

Conclusion

The Landlord's undisputed claim for compensation for recovery of unpaid rent and utilities against the Tenant is successful.

The Landlord has established a monetary claim of \$4,463.42 against the Tenant. I authorize the Landlord to retain the Tenant's full security deposit of \$825.00 in partial satisfaction of the claim. The Landlord is granted a Monetary Order under section 67 of the Act for the balance due by the Tenant to the Landlord in the amount of **\$3,638.42**.

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: August 19, 2020

Residential Tenancy Branch