



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPU-DR, OPUM-DR, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), an order of possession for unpaid utilities; and for a monetary order in addition to the order of possession for rent and/or utilities not paid in the required time in the amount of \$2,800.00; and to recover the \$100.00 cost of his Application filing fee.

The Landlord 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 20 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 ("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 October 21, 2020. The Landlord also said he served the documents in person and taped copies of them to the rental unit door on October 21, 2020. 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, but he said that he did not have the Tenant's email address to share. The Landlord confirmed his understanding that the Decision would be emailed to him and mailed to the Tenant at the rental unit address, and that any Orders would be sent to the appropriate Party.

The Landlord said that he obtained an order of possession dated November 30, 2020, from another Application, and that he then obtained a Writ of Possession from the B.C. Supreme Court. The Landlord said that a bailiff removed the Tenant from the rental unit pursuant to the Writ of Possession on December 8, 2020. The Landlord said that the Tenant did not give the Landlord his forwarding address.

As a result, the Landlord no longer needs an order of possession from this Application. I, therefore, dismiss that claim without leave to reapply.

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 Application filing fee?

Background and Evidence

The tenancy agreement states, and the Landlord confirmed in the hearing that the fixed term tenancy began on September 1, 2020, and ran to October 30, 2020 at which time, the Parties agreed that the Tenant would vacate the rental unit. The Landlord confirmed that the Tenant was supposed to pay the Landlord a monthly rent of \$2,500.00, due on the first day of each month, pursuant to the tenancy agreement. The Landlord said that the Tenant never paid any rent, but he paid the Landlord a security deposit of \$1,250.00, and no pet damage deposit.

The Landlord said that the Tenant never paid any rent or utilities, the latter of which was also required by the tenancy agreement. In part 3 of the tenancy agreement in a section entitled "Additional Information", the Landlord wrote: "70% extra for utilities, water, natural gas, water, etc." There is a signature beneath this that is consistent with the Tenant's signature in the execution portion of the tenancy agreement.

The Landlord submitted a handwritten letter that he said he gave to the Tenant, dated October 1, 2020. In this letter, the Landlord set out the amounts owing for gas and

electricity as of October 1, 2020. The Landlord wrote:

I already showed you the [gas bill] for \$187.23 and due date Oct 6, 2020, and [electricity] comes after two months, now you can pay \$2500 rent for October month and \$300 (approx.) for utilities of September month. If there is any difference in [electricity] bill that will be adjusted in October month's utilities bill (after receiving bill from [electricity company]).

The Landlord also said that the Tenant did not pay any rent owing pursuant to the tenancy agreement and the Act, and despite having lived in the rental unit from September 1, 2020, until he was removed by a bailiff on December 8, 2020. However, the Landlord applied for recovery of one month

The Tenant did not dispute the Landlord's claims in this Application.

Analysis

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

I find that the tenancy agreement obliged the Tenant to pay 70% of the utilities for the residential property. I also find that the Tenant's signature beneath this clause indicates his acknowledgement of this obligation.

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 30 days after receipt of the written demand.

I find that the Landlord gave the Tenant a written demand for the payment of utilities owing on October 1, 2020, and that this debt was not paid after more than 30 days of receipt of the written demand.

The Landlord said that the Tenant has paid nothing toward utilities, despite having received the Landlord's written notice in this regard. I find that the Landlord is eligible for recovery of \$300.00 from the Tenant for utilities owing for September 2020, pursuant to the demand letter. I, therefore, award the Landlord with **\$300.00** from the Tenant, pursuant to sections 46(6) and 67.

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 sections 26 and 67 of the Act, I award the Landlord with **\$2,500.00** in unpaid rent owed to the Landlord by the Tenant on October 1, 2020.

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 \$1,250.00 in partial satisfaction of the Landlord's monetary awards.

Given his success in his Application, the Landlord is also awarded recovery of the **\$100.00** Application filing fee, pursuant to section 72 of the Act.

	Receipt/Estimate From	For	Amount
1		Unpaid Utilities awarded	\$300.00
2		Unpaid Rent awarded	\$2,500.00
3		Application filing fee	\$100.00
		Less security deposit	(\$1,250.00)
		Total monetary order	\$1,650.00

The Landlord is authorized to retain the Tenant's \$1,250.00 security deposit in partial satisfaction of the monetary awards owing. I grant the Landlord a monetary order from the Tenant in the amount of **\$1,650.00** for the remaining amount of the awards owing after deduction of the security deposit, pursuant to section 67 of the Act.

Conclusion

The Landlord is successful in his Application for recovery of \$300.00 in unpaid utilities and \$2,500.00 in unpaid rent for a total award of \$2,800.00. The Landlord is also awarded recovery of the \$100.00 Application filing fee.

The Landlord is authorized to retain the Tenant's \$1,250.00 security deposit in partial satisfaction of the monetary award. I grant the Landlord a Monetary Order of **\$1,650.00** for the remainder owing by the Tenant to the Landlord for the outstanding monetary awards.

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: January 19, 2021

Residential Tenancy Branch