



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1122697 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, MNDCL-S, 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 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover its filing fee for this application from the tenants pursuant to section 72.

Extensive discussions over a 59 minute period took place in which the landlord's agent, W.S. was repeatedly cautioned to "not go off topic" regarding her submissions over the procedural questions asked. The landlord was repeatedly cautioned to "stay on point" and that any additional evidence she felt was relevant could be provided after answering the procedural questions.

The landlord's agents, W.S. and M.W. attended the hearing via conference call and provided affirmed testimony. The tenant, S.S. attended the hearing via conference call and provided affirmed testimony.

The tenant, B.H. and B.S. did not attend or submit any documentary evidence. Both these parties were unrepresented.

The landlord's agents (the landlord) stated that they represent the numbered company and that the landlord listed on the signed tenancy agreement dated January 24, 2020 was an agent of the numbered company. The landlord was cautioned that as the

named landlord and the landlord listed on the signed tenancy agreement were different that there could be issues with any order that may be granted. The landlord stated that they understood and still wished to proceed based upon the filed application names.

Both parties were advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

The landlord stated that the tenant, B.H. was served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail, however that package was returned as "wrong address". The landlord stated that the tenant's address for service used was not reliable based upon unreliable evidence of the address from both the tenant's mother and aunt. As the tenant has not attended and the landlord has provided undisputed affirmed testimony that the package was returned as "wrong address" in conjunction with the landlord's evidence that the mailing address used was "unreliable", I find that the landlord's application filed against the tenant, B.H. to be dismissed for lack of service. The landlord failed to properly served the tenant, B.H. pursuant to sections 88 and 89 of the Act. The tenant, B.H.'s name shall be removed from this application and any decision or order that might result.

Both parties confirmed the landlord served the tenant, S.S. with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on March 10, 2021.

The landlord stated that the tenant, B.S. was served with the notice of hearing package and the submitted documentary evidence via courier on May 7, 2021 to a correctional center where the tenant was currently being held in custody. The landlord stated that that package was signed for by a correctional officer on behalf of the tenant.

I accept the undisputed affirmed evidence of the landlord and find that the tenant, S.S. and B.S. were served with the notice of hearing package and the submitted documentary evidence in accordance with sections 88 and 89 of the Act. Despite B.S. not attending, I find that both S.S. and B.S. are sufficiently served as per section 71 of the Act.

At the outset, the landlord's application was clarified. The landlord filed an application for a monetary claim of \$6,276.47. The landlord stated that an amendment was filed on March 9, 2021 increasing the claim by an additional \$1,073.84 for damages and \$3,915.00 for compensation for a total of \$11,565.31 as per the submitted copy of the

monetary order worksheet dated March 9, 2021. A review of the Residential Tenancy Branch (RTB) file was made and no amendment was found filed. However a copy of an amendment (RTB-42L) form was found filed as evidence. The landlord was advised that this was contrary to the Rules of Procedure. A review of the communications log of the RTB File show that the landlord called the RTB on March 4, 2021 and was provided with information on how to amend their application. On this basis, the landlord's amendment is dismissed with leave to reapply. Leave to reapply is not an extension of any applicable limitation period. The landlord's monetary claim shall be limited to the amount filed at \$6,276.47. The landlord and tenant both confirmed their understanding and wished to proceed.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, for money owed or compensation and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on February 1, 2020 on a fixed term tenancy ending on February 1, 2021 as per the submitted copy of the signed tenancy agreement dated January 24, 2020. The monthly rent was \$1,200.00 payable on the 1st day of each month. A security deposit of \$600.00 was paid on February 1, 2020.

The landlord seeks a clarified monetary claim of \$5,425.11 which consists of:

\$4,800.00	Unpaid Rent, December 2020- March 2021
\$609.60	Unpaid Utilities, Electricity, December 30- February 17, 2021
\$15.51	Unpaid Utilities, Gas, December 30-February 1, 2021

The landlord claims that the tenants failed to pay rent of \$1,200.00 per month for the 4 month period between December 2020 to March 2021. The tenant, S.S. stated that she had moved out in June 2020 leaving the tenant, B.H. behind. The tenant, S.S. stated that she was not aware of the rent not being paid as she no longer has contact with B.H. The tenant, S.S. also stated that she has never met the tenant, B.S. and does not know who she is. The tenant, S.S. stated that she notified the landlord's agent, M.W. that she had vacated.

The landlord also claims that the tenants failed to pay utilities of \$609.60 for electricity and \$15.51 for gas. The landlord has submitted copies of the two statements for payment which the tenants failed to pay. The landlord stated that the utilities have been applied against the rental property forcing the landlord to pay these amounts. The tenant, S.S. confirmed that the utilities used to be in her name prior to her moving out, but since she had vacated in June 2020 she was not aware that the other tenants had not paid them.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

I accept the undisputed affirmed evidence of both parties and find that the landlord has established a claim for unpaid rent and utilities totalling \$5,425.11. The landlord provided undisputed evidence that the tenants failed to pay rent for the 4 month period at \$1,200.00 per month. I also find based upon the undisputed evidence of the landlord that both electricity and gas were not paid by the tenants. I find that this is in line with the submitted copy of the signed tenancy agreement dated January 24, 2020 which shows in section 3 of the agreement that electricity and natural gas were not included as part of the tenancy. I find this despite the tenant, S.S.'s evidence that she had vacated the rental unit in June 2020. Although the tenant stated that she notified the landlord, no request was made nor did the landlord remove her name from the signed tenancy agreement.

The landlord is also entitled to recovery of the \$100.00 filing fee. I authorize the landlord to retain the \$600.00 security deposit in partial satisfaction of this claim.

Conclusion

The landlord is granted a monetary order for \$4,925.11.

This order must be served upon the tenants. Should the tenants fail to comply with this order, the order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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 16, 2021

Residential Tenancy Branch