



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL

Introduction

On January 29, 2021, the Landlord made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”), seeking to apply the security deposit towards this debt pursuant to Section 38 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On February 4, 2021, this Application was set down for a hearing on June 1, 2021 at 1:30 PM but was subsequently adjourned for reasons set out in my Interim Decision dated June 1, 2021. On June 4, 2021, these matters were set down for a reconvened hearing on September 24, 2021 at 11:00 AM.

The Landlord attended the reconvened hearing. The Tenant attended the reconvened hearing, with A.K. attending as well. At the outset of the reconvened hearing, I explained to the parties that as the hearing was a teleconference, neither party could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, the parties were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral

and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to apply the security deposit towards these debts?
- Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on October 15, 2018 and it ended when the Tenant gave up vacant possession of the rental unit on March 31, 2020. Rent was established at an amount of \$3,000.00 per month and was due on the first day of each month. A security deposit of \$1,500.00 was also paid. A signed copy of the tenancy agreement between the parties was submitted as documentary evidence.

The Landlord advised that neither a move-in nor a move-out inspection report were conducted with the Tenant.

At the original hearing, the Tenant advised that he provided the Landlord with his forwarding address in writing by placing it in the Landlord's mailbox on March 31, 2020. He stated that the people moving into the rental unit witnessed him do this. He did not have any documentary evidence to prove that this was done, and he did not ever tell the Landlord to use his work address as a service address for documents. Although, he confirmed that he received the Landlord's Notice of Hearing package at his work address. He stated that the reason he did not make an Application for double the security deposit back was because he did not believe he would get the security deposit back from the Landlord.

The Landlord advised that he was never provided with the Tenant's forwarding address in writing. He stated that he used the Tenant's work address for service of the Notice of

Hearing package because this was the only address that he had for the Tenant, and this address was on an old business card that he had.

During the reconvened hearing, the Landlord advised that he was seeking total compensation in the amount of \$4,771.61 on his Application; however, he stated that he is only now seeking compensation in the amount of **\$3,474.73** for the cost of utilities that the Tenant owes. He submitted that he paid the entire utility bills himself, but the Tenant was responsible for 60% of the utilities as per the tenancy agreement. He stated that the Tenant stopped paying the Landlord for the utilities and the Tenant was sent reminders for the payments; however, the Tenant kept stating that he was busy. The Landlord referenced the ledger and the copy of the utility bills, submitted as documentary evidence, to support these claims.

The Tenant advised that the toilet in the rental unit had been leaking and that the Landlord ignored his calls to repair this. He stated that he called a plumber himself, but the plumber refused to do this repair as the Landlord would not pay for the bill. He referenced the Landlord's water bill and noted that the previous bill was substantially lower than the current bill. Therefore, this supports his position that he should not be responsible for this amount on the water bill as it was elevated due to the leaking toilet.

A.K. confirmed that there was a leaking toilet in the rental unit.

The Tenant also advised that he had a verbal agreement with the Landlord that the cost of utilities would not be sought; however, he did not have any proof of this. He stated that he met with the Landlord in October 2020, and the Landlord told him that he would take a cheque of \$1,500.00 and keep the security deposit, and then would not pursue any of these claims for utilities.

The Landlord confirmed that they met in October 2020 and that he took a cheque in the amount of \$1,500.00, but this was for the balance of March 2020 rent that was owed. He denied that they had a verbal agreement regarding the utilities.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Sections 24(2) and 36(2) of the *Act* state that the right of the Landlord to claim against a security deposit for damage is extinguished if the Landlord does not complete the condition inspection reports. However, these Sections pertain to a Landlord's right to claim for damage, and as the Landlord applied for utilities owing, which is not a damage claim, I am satisfied that the Landlord still retains a right to claim against the security deposit.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenant's forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenant, pursuant to Section 38(6) of the *Act*.

When reviewing the parties' submissions with respect to a forwarding address in writing, I do not find that the Tenant has provided sufficient evidence that he provided the Landlord with a forwarding address in writing on March 31, 2020. Furthermore, had the Tenant in fact provided this on March 31, 2020, he could have applied for double the security deposit back as the 15-day timeframe for the Landlord to claim against the deposit would have elapsed some time ago. Given that he stated that he did not anticipate getting the security deposit back, I find that this supports the finding that the Tenant, more likely than not, did not ever provide a forwarding address in writing to the Landlord. As such, I am satisfied that the doubling provisions of the *Act* do not apply to the security deposit.

Furthermore, while the parties provided contradictory testimony on what happened with the security deposit, as there is no consistent evidence that the parties agreed that this deposit could be used towards other claims like rent, as the Landlord made this Application seeking to apply the security deposit towards the debts owed, I find it more likely than not that the Landlord had been holding onto this deposit, in trust, until a Decision was made with respect to it.

In addition, regarding the parties' differing testimony about payment of March 2020 rent, as this Application solely pertained to utilities owed, I have not made a determination on this matter. The parties will have to apply for Dispute Resolution to seek relief if they believe there is still some dispute over whether or not this March 2020 rent was paid in full.

With respect to the Landlord's claims for utilities, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

As well, when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. Given the contradictory testimony and positions of the parties, a determination of credibility may be deliberated. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

Regarding the Landlord's claim for the utilities in the amount of **\$3,474.73**, the consistent and undisputed evidence is that the Tenant was responsible for 60% of the utilities. While the Tenant claimed that there was a verbal agreement that he would not be responsible for these anymore, without any documentary evidence to support this submission, I do not give this any weight.

Furthermore, I note that the Tenant did not deny not paying for the utilities that the Landlord claimed for. As well, the only utility bill that the Tenant made any submissions on was the water bill. As such, I am satisfied that the Fortis BC bill, the BC Hydro bill, and the Telus bill are undisputed, and the Landlord should be granted a monetary award for them.

However, I note that there is an apparent discrepancy in the Landlord's recording of the last Fortis BC bill in the amount of \$369.79. This total appears to include a carryover of the previous bill's total of \$250.77, and the Landlord has already factored this amount into his claim. In essence, it appears as if he is asking for this amount twice. As it is the Landlord's duty to calculate accurate claims, I will not be correcting this for him and this last bill of 60% of \$369.79 is dismissed without leave to reapply.

As I am satisfied of the undisputed claims for the remaining Fortis BC bill, the BC Hydro bill, and the Telus bill, I grant the Landlord a monetary award in the following amounts:

Fortis BC:	\$588.87
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BC Hydro:	\$1,181.35
Telus:	\$646.77
Total:	\$2,416.99

With respect to the Landlord's claim of \$835.87 for the cost of the water bill, while the Tenant claimed that there was a leaking toilet, I do not find that the Tenant has corroborated this with sufficient compelling or persuasive documentary evidence. I find it important to note that on the Landlord's ledger, he appears to have reduced the claim for 60% of this total water bill due to what looks like a "Reno Refund", and he is only seeking compensation in the amount of 60% of this reduced amount. While it is not clear what this reduction was for exactly, as the Tenant has not submitted sufficient evidence to support his claim of a leaking toilet, I find that I prefer the Landlord's evidence of a water bill that was owing in the amount of 60% of his reduced bill. As such, I grant the Landlord a monetary award in the amount of **\$835.87** to satisfy this claim.

As the Landlord was successful in this Application, I find that he is entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain the security deposit in partial satisfaction of the debts outstanding.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenant to the Landlord

Fortis BC	\$588.87
BC Hydro	\$1,181.35
Telus	\$646.77
Water	\$835.87
Filing fee	\$100.00
Security deposit	-\$1,500.00
TOTAL MONETARY AWARD	\$1,852.86

Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$1,852.86** in the above terms, and the Tenant must be served with **this Order** as soon as possible.

Should the Tenant fail to comply with this Order, this 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: October 20, 2021

Residential Tenancy Branch