



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL-S, MNDCL-S

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- a monetary order for unpaid rent, pursuant to section 26;
- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67; and
- an authorization to retain the tenants' security deposit (the deposit), pursuant to section 38.

I left the teleconference connection open until 2:05 P.M. to enable the tenants to call into this teleconference hearing scheduled for 1:30 P.M. The tenants did not attend the hearing. Landlord MB and counsel CR (the landlord) attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord, his counsel and I were the only ones who had called into this teleconference.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

I accept the landlord's testimony that the tenants were served with the application and evidence (the materials) by registered mail on May 06, 2021, in accordance with section 89(2)(b) of the Act. The landlord sent the packages to the forwarding address provided by the tenants. The tracking numbers and the forwarding address are recorded on the cover of this decision.

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail the tenants are deemed to have received the materials on May 11, 2021, in accordance with section 90 (a) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondents.

#### Preliminary Issue – Application for unpaid rent

The notice of hearing indicates: “I want to recover the money for the unpaid rent – holding security or pet deposit \$1,700.00” and “I want compensation for my monetary loss or other money owed – holding security or pet deposit \$2,472.62”.

The landlord submitted into evidence a monetary order worksheet indicating a claim of \$1,672.61 for unpaid electricity and a claim of \$800.01 for unpaid gas, in the total amount of \$2,472.62. The landlord affirmed the monetary order worksheet served to the tenants also indicates a claim for unpaid rent of March 2021 in the amount of \$1,700.00 and the total amount requested is \$4,172.82.

Per section 59(2)(b) of the Act, I accept the landlord's application for a monetary order for unpaid rent and utilities in the total amount of \$4,172.82 and for an authorization to retain the tenants' deposit.

#### Issues to be Decided

Is the landlord entitled to:

1. a monetary order for unpaid rent?
2. a monetary order for unpaid utilities?
3. an authorization to retain the tenant's deposit?

#### Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending party; it is the landlord's obligation to present the evidence to substantiate the application.

The landlord affirmed the tenancy started on March 01, 2020 and ended on March 31, 2021. Monthly rent was \$1,700.00, due on the first day of the month. At the outset of the tenancy a deposit of \$850.00 was collected and the landlord holds it in trust. The landlord submitted two tenancy agreements into evidence.

The tenancy agreement signed by tenant FA indicates monthly rent of \$1,000.00 and the tenancy agreement signed by tenant MA indicates monthly rent of \$700.00. Both agreements are for the same rental unit, from March 01, 2020 to February 29, 2021, and indicate that electricity and gas are not included in rent. The landlord affirmed the tenants rented the rental unit together under a single tenancy, but asked to have separate tenancy agreements.

The landlord confirmed receipt of the forwarding address on April 12, 2021 and submitted an email from the tenants providing the forwarding address. The landlord applied for dispute resolution on April 26, 2021.

The landlord is claiming for unpaid March 2021 rent in the amount of \$1,700.00, as the tenants did not pay rent.

The landlord is claiming for unpaid electricity bills in the amount of \$1,672.81. The landlord submitted seven electricity bills and a ledger.

The landlord is claiming for unpaid gas bills in the amount of \$800.01. The landlord submitted twelve gas bills and a ledger.

The landlord affirmed he informed the tenants about the unpaid electricity and gas bills during the tenancy and the tenants did not pay for these bills.

### Analysis

Section 7 of the Act states:

Liability for not complying with this Act or a tenancy agreement

(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove the case is on the person making the claim.

#### Unpaid rent

Based on the convincing and undisputed landlord's testimony and the two tenancy agreements, I find that tenants FA and MA rented the rental unit together and agreed to pay monthly rent in the total amount of \$1,700.00. I note that both tenancy agreements are for the same period, for the same rental unit and contain identical clauses.

In the March 12, 2014 decision from the British Columbia Court of Appeal, *Rhebergen v. Creston Veterinary Clinic Ltd.*, 2014 BCCA 97, Justice Lowry writes:

[54] Generally a court must endeavour to resolve ambiguity in order to determine the mutual intention of the parties to a contract by interpreting the wording of any given clause in the context of the whole of the agreement as well as the factual matrix that gave rise to the agreement and against which it is intended to operate: *Jacobsen v. Bergman*, 2002 BCCA 102, paras. 3-6.

In light of the above remarks, I find it is reasonable to conclude that the two tenants entered into a single tenancy agreement to pay monthly rent of \$1,700.00 on the first day of the month.

Section 26 of the Act requires that a tenant pay rent when it is due under the tenancy agreement.

Based on the landlord's convincing and undisputed testimony, I find the tenants are in rental arrears in the amount of \$1,700.00 for March 2021 rent. I award the landlord \$1,700.00 for unpaid rent.

#### Utilities

I accept the uncontested testimony that the tenants must pay electricity and gas bills and that the tenants did not pay seven electricity bills in the total amount of \$1,672.81 and twelve gas bills in the total amount of \$800.01.

Based on the landlord's uncontested testimony, the seven electricity and twelve gas bills, I find the tenants breached the tenancy agreement by not paying the electricity and gas utilities bills and the landlord suffered a loss of \$2,472.82.

As such, I award the landlord \$2,472.82 in compensation for this loss.

#### Deposit and summary

As explained in section D.2 of Policy Guideline #17, the Residential Tenancy Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the deposit held by the landlord and the monetary amount or cost awarded to a tenant may be deducted from any rent due to the landlord. Thus, I order the landlord to retain the tenant's deposit of \$850.00 in partial satisfaction of the monetary award granted.

In summary:

Item	Amount \$
March 2021 rent	1,700.00
Utilities	2,472.82
Minus deposit	850.00 (subtract)
<b>Total monetary award</b>	<b>3,322.82</b>

Conclusion

Pursuant to sections 38, 26 and 67 of the Act, I authorize the landlord to retain the \$850.00 deposit and grant the landlord a monetary order in the amount of \$3,322.82.

The landlord is provided with this order in the above terms and the tenants must be served with this order. Should the tenants 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 27, 2021

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Residential Tenancy Branch