



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

The tenant attended the hearing via conference call and provided undisputed affirmed testimony. The landlord did not attend or submit any documentary evidence.

The tenant was 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 tenant stated that the landlord was served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on July 13, 2021. The tenant has provided the Canada Post Customer Receipt Tracking Number (listed on the cover of this decision) as confirmation of service. I accept the undisputed affirmed evidence of the tenant and find that the landlord has been properly served as per sections 88 and 89 of the Act.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for 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.

The tenant seeks a monetary order for compensation of \$1,727.71 which consists of

\$1,606.71	Overpayment of Municipal Utilities
\$15.00	Service Charge, Bank Statements
\$100.00	Filing Fee
\$1,727.71	

The tenant claims that between November 2017 and February 2021 an overpayment of municipal utilities were made totalling \$1,606.71. The tenant claims that on March 20, 2021 the tenant realized that she had been overpaying utilities for the entire period of her tenancy with the named landlord. The tenant claims that her tenancy includes curbside and sewer services and that she is only responsible for water. The tenant stated that she was sent the local municipal utilities bill and each entire bill was paid for by her. The tenant stated that this oversight was noticed when she was reviewing her tenancy agreement with the new landlord.

The tenant stated that the landlord was contacted on March 20, 2021 via text message requesting copies of past utility bills and was told she did not have any copies and then failed to respond when her request to have duplicate copies produced. The tenant then notified the landlords via email informing them of the overpayment of utilities during the entire time of the tenancy. The tenant stated a follow up email was sent to the landlords on April 5, 2021 in detail regarding the over payments made including copies of the bills on hand requesting the landlord to attend to this matter. The landlord responded stating that they were busy for the next three weeks and could not look into this matter. The tenant stated she contacted the Residential Tenancy Branch for more information and called her bank to obtain copies of her bank statements.

The tenant has submitted in support of her claim copies of:

- Tenancy Agreement
- Emails to Landlord
- Text Messages to Landlord
- Letters to Landlord (including copies of Municipal utility bills)
- Email to Local Municipality

Bank payments
Bank Statement

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, I accept the undisputed affirmed evidence of the tenant that she had been inadvertently overpaying the utilities for the period November 2017 to February 2021 for a total of \$1,606.71. The tenant notified the landlord immediately upon discovery on March 20, 2021 and despite multiple attempts at resolving the issue with the landlord was unsuccessful. I accept the tenant's evidence of her calculations on the overpayment of utilities based upon the submitted documentary evidence the tenant obtained from the local municipality concerning utility rates. The tenant provided copies of her bank statements showing all utility payments. I agree that the calculations made by the tenant are reasonable based upon the undisputed evidence provided that used set rates provided by the local municipality, minus actual payments for utilities and proof of payments from her bank statements.

On the tenant's request for recovery of \$15.00 for bank service charge fees, I find that the tenant has failed to provide sufficient evidence to show her entitlement. The tenant stated that her signed tenancy agreement provided full details for her responsibility concerning the utilities; the tenant was provided with sufficient details of the utilities from the landlord for payment; and the tenant was also previously provided with copies of her own bank statements. I find that the landlord cannot be found liable for this cost as this is fully under the control of the tenant and not the landlord. This portion of the tenant's claim is dismissed without leave to reapply.

The tenant is also entitled to recovery of the \$100.00 filing fee.

Conclusion

The tenant is granted a monetary order for \$1,706.71

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

Residential Tenancy Branch