



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Pan Pacific Platinum Real Estate Services
Inc. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order of \$2,315.38 for damage or compensation under the Act; and to recover the \$100.00 cost of their Application filing fee.

An agent for the Landlord, S.X. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenants. The teleconference phone line remained open for over 15 minutes and was monitored throughout this time. The only person to call into the hearing was the Agent, who indicated that she 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 Agent.

I explained the hearing process to the Agent and gave her an opportunity to ask questions about it. During the hearing the Agent was given the opportunity to provide her 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 Tenants did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Agent testified that she served each Tenant with the Notice of Hearing documents by Canada Post registered mail, sent on July 18, 2021. The Agent provided Canada Post tracking numbers as evidence of service. I find that the Tenants were 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 Agent in the absence of the Tenants.

Preliminary and Procedural Matters

The Agent provided the Landlord's email address and the Tenants' mailing address in the Application, and she confirmed these addresses in the hearing. She also confirmed her understanding that the Decision would be sent to both Parties in this manner, and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Agent that pursuant to Rule 7.4, I would only consider the Landlord's written or documentary evidence to which the Agent pointed or directed me in the hearing. I also advised her that she is not allowed to record the hearing and that anyone who was recording it was required to stop immediately. The Agent affirmed that she was not recording the hearing.

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 Agent confirmed the following details of the Parties' periodic tenancy. The tenancy began on July 1, 2017, ran to July 1, 2018, and then operated on a month-to-month basis. The Tenants are required to pay the Landlord a monthly rent of \$3,411.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$1,600.00, and no pet damage deposit.

The Agent pointed out that at the bottom of page two of the tenancy agreement, it states that the Tenants are to pay 65% of utilities, including water, gas, and electricity.

The Agent said that she emailed the Tenants for reimbursement of the utilities she paid for them, but she said that they would not reply. The Agent said she submitted all of the bills, she said, "Everything's there." The Agent submitted a copy of a letter to the

Tenants dated January 27, 2021, in which she said they owe \$2,315.38 in utilities they have used up to the date of the Application. The Landlord gave the Tenants 30 days to pay this bill.

The Agent also submitted the following table setting out the amounts owing in utilities, as follows:

[Gas bill]	Payment	Deduct Late Fee	65% of Utilities
4-Dec-19	485.9		315.84
4-Dec-19	276.45		179.69
5-Mar-20	328.96	9.29	213.82
5-Mar-20	619.2	4.93	402.48
29-May-20	193.43		125.73
3-Jun-20	250.32		162.71
7-Oct-20	121.19		78.77
	2275.45	14.22	1469.80

[Electricity]	Payment	Deduct Late Fee	65% of Utilities
12-Nov-19	221.25		
9-Jan-20	292.26		
	339.37 *		
11-Mar-20	399.37		
30-May-20	448.02		
	1300.9		
	1360.90		845.59

Total Amount	2315.38
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* Landlord made a transcription error from bill to spreadsheet; corrected here.

I reviewed the utilities bills the Landlord submitted and I found billings for all but the two charges for December 4, 2019 in the gas bills. The amounts for which I found billing evidence totals \$983.51 plus late fees of \$14.22 for a total of **\$997.73**.

I reviewed the electricity bills the Landlord submitted and I found billings for all the items charged, although I also discovered a transcription error by the Landlord, which reduced the amount she actually paid in electricity bills by \$60.00. As such, I corrected the error

in the Landlord's claim. Therefore, I find that the Landlord's electricity claim is for 65% of \$1,360.90, which is **\$884.59**.

Analysis

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

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, and if the utility charges are unpaid for more than 30 days after receipt of the written demand.

I find from the Landlord's evidence that the Tenants are responsible for 65% of the gas and electricity billings for the residential property; however, I also find that the Tenants have not paid these charges when requested, and ultimately demanded by the Landlord.

I am satisfied that the Landlord gave the Tenants 30 days to pay the outstanding utilities owing to the Landlord, and that the Tenants did not pay these charges when due. As such, I find that the Landlord may treat the unpaid utility charges as unpaid rent. I find that Agent has proven on a balance of probabilities that the Tenants owe the Landlord \$997.73 in gas and late charges, and \$884.59 in electricity charges. I, therefore, award the Landlord **\$1,882.32** from the Tenants for unpaid utilities, pursuant to sections 46 (6) and 67 of the Act.

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

I grant the Landlord a Monetary Order from the Tenants of **\$1,982.32** pursuant to section 67 of the Act.

Conclusion

The Landlord is predominantly successful in their Application, as they provided sufficient evidence to support their burden of proof on a balance of probabilities. The Landlord is awarded \$1,882.32 in gas and electricity charges owed them by the Tenants. The Landlord is also awarded recovery of the \$100.00 Application filing fee.

I grant the Landlord a Monetary Order of **\$1,982.32** from the Tenants for reimbursement of unpaid utilities owing to the Landlord. This Order must be served on the Tenants by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

As the Tenants are jointly and severally liable as joint Tenants, the Landlord may enforce the Monetary Order against one or the other or both of them.

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: November 19, 2021

Residential Tenancy Branch