



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, OPB, MNRL-S, MNDCL-S, FFL

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a tenancy. In this application for dispute resolution, the Landlord applied for:

- an order of possession, having served the Tenant with a One Month Notice to End Tenancy for Cause, dated June 6, 2021;
- an order of possession, as the tenant did not vacate the rental unit at the end of the fixed term tenancy;
- a monetary order for unpaid rent, noting that the Landlord holds the Tenant's security deposit;
- a monetary order for unpaid utilities, noting that the Landlord holds the Tenant's security deposit; and
- the filing fee.

The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were also made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The Landlord testified they served the Notice of Dispute Resolution Proceeding and evidence on the Tenant in person on July 31, 2021, which the Tenant confirmed. I find the Landlord served the Tenant in accordance with section 89 of the Act.

As the Tenant testified they did not serve their evidence on the Landlord, I informed the parties I would not consider it in my decision. I find the Tenant did not serve the Landlord in accordance with section 89 of the Act.

Preliminary Matter

As the hearing began, the Landlord testified that as the Tenant had moved out of the rental unit in mid September, the Landlord was no longer seeking an order of possession. The Landlord's claims for an order of possession are dismissed; the remainder of this decision will address the Landlord's application for the two monetary orders and the filing fee.

Issues to be Decided

- 1) Is the Landlord entitled to a monetary order for unpaid rent, noting they still hold the Tenant's security deposit?
- 2) Is the Landlord entitled to a monetary order for unpaid utilities, noting they still hold the Tenant's security deposit?
- 3) Is the Landlord entitled to the filing fee?

Background and Evidence

The parties agreed on the following particulars of the tenancy. The fixed-term tenancy began on January 1, 2020, and was to end on December 31, 2020. Rent was \$1200.00, due on the first of the month; and the Tenant paid a security deposit of \$600.00, which the Landlord still holds.

The Landlord testified the Tenant moved out in mid September, but the Landlord was unsure on what date.

The Tenant testified that on August 9, 2021, they gave the Landlord notice by text message that they would be moving out on September 15, 2021.

The Landlord testified that since their application, the Tenant had paid much of the rent owing, and now owes a remaining \$500.00 for August. The Landlord testified the Tenant did not pay rent for September; this was confirmed by the Tenant.

Regarding the Landlord's claim for \$800.00 for unpaid utilities, the Landlord testified that the Tenant would keep their exterior door open at times, which used more heat and drove the hydro bill up compared with previous years. The Landlord acknowledged that the tenancy agreement does not state that the Tenant must pay the Landlord for hydro, but testified that they told the Tenant about the difference in the current and previous bills, and showed the Tenant the bills. The Landlord testified the parties had made an

oral agreement in autumn of 2020 that the Tenant would pay the extra hydro charges resulting from their behaviour.

The Tenant testified that they had not made an oral agreement with the Landlord to pay for hydro.

The Landlord testified they told the Tenant they owed the Landlord for hydro in June or July of 2021. The Landlord testified they did not serve the Tenant with a written demand for payment.

Analysis

I have carefully reviewed the testimony and evidence, and, on a balance of probabilities, find as follows:

With respect to the Landlord's request for a monetary award for unpaid rent, section 26 of the Act confirms that a tenant must pay rent when due under a tenancy agreement, whether or not the landlord complies with the Act, regulations, or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent.

In this case, the Landlord testified that the Tenant owes \$500.00 from August 2021 and \$1,200.00 that became due on September 1, 2021.

The Tenant agreed rent has not been paid as alleged but suggested they should not have to pay rent because they gave the Landlord written notice to end the tenancy effective September 15, 2021, as described above.

I reject the Tenant's assertion that rent was not due or that they had a right to deduct rent. Even if I accept that the Tenant's written notice was effective to end the tenancy, section 45 of the Act confirms that a tenant's notice does not become effective until the last day of the month following the month in which notice is given; in this case, September 30, 2021. Accordingly, rent became due in full on September 1, 2021, regardless of when the Tenant elected to vacate the rental unit.

Considering the above, I find the Landlord is entitled to a monetary award for unpaid rent in the amount of \$1,700.00 (\$500.00 + \$1,200.00).

With respect to the Landlord's request for a monetary award for unpaid utilities, I find the parties' testimony contradicts each other regarding whether or not an oral agreement had been made for the payment of hydro. I note that the Tenancy agreement does not indicate the Tenant must pay the Landlord for hydro, and that the Landlord has not provided documentary evidence to support their claim that the parties had reached an oral agreement for the Tenant to pay the Landlord hydro. Therefore, I find there is insufficient evidence to support the Landlord's claim for unpaid utilities. I find this aspect of the Landlord's claim is dismissed without leave to reapply.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord is successful in one of the claims in their application, I order the Tenant to pay the \$100.00 filing fee the Landlord paid to apply for dispute resolution.

In accordance with sections 38 and 72 of the Act, I allow the Landlord to retain \$600.00 of the Tenants' security deposit in partial satisfaction.

I find the Landlord is entitled to a monetary order for \$1,200.00. This accounts for the rent owed, the filing fee, and the Tenant's security deposit, as follows:

| | |
|-----------------------------|-------------------|
| Unpaid rent, August 2021 | \$500.00 |
| Unpaid rent, September 2021 | \$1,200.00 |
| Filing fee | \$100.00 |
| Tenant's security deposit | - \$600.00 |
| Total | \$1,200.00 |

Conclusion

The Landlord is granted a monetary order in the amount of \$1,200.00. The monetary order must be served on the Tenant. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: November 17, 2021

Residential Tenancy Branch