



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord under the *Residential Tenancy Act* (the “Act”) for a monetary order for unpaid rent and utilities and an order to recover the cost of filing the application. The matter was set for a conference call.

The Landlord and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. Both the Tenant and the Landlord were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. Both parties were advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to a monetary order for unpaid rent and utilities?
- Is the Landlord entitled to the return for their filing fee for this application?

Background and Evidence

While I have considered all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The parties agreed that the tenancy began in the fall of 2017, as a month-to-month tenancy, with no signed tenancy agreement and an agreed-upon monthly rent of \$1,500.00. The Landlord testified that they collected a \$700.00 security deposit at the outset of this tenancy.

The Landlord testified that they did not complete a written move-in or move-out inspection for this tenancy.

The parties agreed that the tenancy ended due to a hearing with the Residential Tenancy Branch that resulted in an order of possession being awarded to the Landlord and that the Tenant moved out of the rental unit on April 14, 2021, in accordance with that order of possession.

The Landlords testified that the Tenant had not paid the rent for April 2021, in the amount of \$1,500.00. The Landlord is requesting a monetary order for the outstanding rent.

The Tenant agreed that they had not paid the rent for April 2021.

The Landlord testified that they are also claiming for unpaid hydro bills for this tenancy, consisting of \$117.00 for March 2021, \$427.90 for balances outstanding in hydro between September 2020 and March 2021, and \$86.13 in hydro for April 2021. The Landlord submitted four hydro bills into documentary evidence.

The Tenant testified that they had paid all the hydro bills for this tenancy and that they did not owe anything further in hydro payments for this tenancy. The Tenant submitted a copy of four hydro payment receipts into documentary evidence.

The Landlord was asked if they had received the hydro payments indicated in the four hydro payment receipts submitted by the Tenant. The Landlord testified that they could not say if they had received those payments as they did not have their receipt book in front of them. The Landlord was asked to provide details of how they reached the dollar

amount they claimed for; the Landlord was unable to explain the detail of the calculations of their claim for hydro bills.

Analysis

Based on the evidence before me, the testimony of these parties, and on a balance of probabilities:

I accept the testimony of the Landlord that they did not conduct the move-in inspection for this tenancy. Section 23 of the *Act* states the following:

Condition inspection: start of tenancy or new pet

23 (1) *The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.*

(2) *The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if*

(a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and

(b) a previous inspection was not completed under subsection (1).

(3) *The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.*

(4) *The landlord must complete a condition inspection report in accordance with the regulations.*

(5) *Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.*

(6) *The landlord must make the inspection and complete and sign the report without the tenant if*

(a) the landlord has complied with subsection (3), and

(b) the tenant does not participate on either occasion.

I find that the Landlord breached section 23 of the *Act* when they did not complete the required move-in inspection of the rental unit at the beginning of this tenancy. Section 24(2) of the *Act* outlines the consequence for a landlord when the inspection requirements are not met.

Consequences for tenant and landlord if report requirements not met

24 (2) *The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord*

- (a) does not comply with section 23 (3) [2 opportunities for inspection],*
- (b) having complied with section 23 (3), does not participate on either occasion, or*
- (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.*

Pursuant to section 24(2) of the Act, I find that the Landlord extinguished their right to make a claim against the security deposit for damage to the residential property for this tenancy. I have reviewed the Landlord's application and noted that the Landlord has applied for the recovery of unpaid rent. As the Landlord's application issue is for the recovery of unpaid rent and not damages to the rental unit, I find that the Landlord was within their right to make a claim against the security deposit for this tenancy.

Section 26(1) of the Act states that a tenant must pay the rent when it is due under the tenancy agreement.

Rules about payment and non-payment of rent

26 (1) *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

(2) A landlord must provide a tenant with a receipt for rent paid in cash.

(3) Whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not

- (a) seize any personal property of the tenant, or*
- (b) prevent or interfere with the tenant's access to the tenant's personal property.*

(4) Subsection (3) (a) does not apply if

- (a) the landlord has a court order authorizing the action, or*
- (b) the tenant has abandoned the rental unit and the landlord complies with the regulations.*

In this case, I accept the agreed-upon testimony of these parties that the rent has not been paid for April 2021. I find that the Tenant breached section 26 of the Act when they

did not pay the rent as required under the tenancy agreement. Therefore, I find that the Landlord has established an entitlement to a monetary award in the amount of \$1,500.00 in rent for April 2021.

As for the Landlord's claim of \$631.03 in unpaid hydro bills for this tenancy, I find that the parties, offered conflicting verbal testimony regarding the payment of the hydro bills for this tenancy. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim, in this case, it is the Landlord who holds the burden of proof.

I have reviewed the testimony and documentary evidence submitted by both parties, and I find that there is insufficient evidence before me to overcome the evidence submitted by the Tenant that the hydro bills had been paid in full for this tenancy. In the absence of sufficient evidence to support the Landlord's claim, I find that I must dismiss this portion of the Landlord's claim in its entirety.

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 has been partially successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this hearing.

I grant the Landlords a monetary order of \$900.00, consisting of \$1,500.00 in rent for April 2021, and \$100.00 in the recovery of the filing fee for this hearing, less the \$700.00 security deposit the Landlord is holding for this tenancy.

Conclusion

I find for the Landlord under sections 26, 38 and 72 of the Act. I grant the Landlord a **Monetary Order** in the amount of **\$900.00**. The Landlord is provided with this Order 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: November 19, 2021

Residential Tenancy Branch