



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0821149 BC Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, MNDL, 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 for unpaid rent and utilities of \$1,127.35, for compensation for monetary loss or other money owed of \$828.88; and to recover the \$100.00 cost of his Application filing fee.

The Tenant and an agent for the Landlord, K.D. ("Agent") appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing the Tenant and the Agent were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. 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.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. The Tenant said she received the Application and the documentary evidence from the Landlord and had reviewed it prior to the hearing. The Tenant confirmed that she had not submitted any documentary evidence to the RTB or to the Landlord for this proceeding.

Preliminary and Procedural Matters

The Agent provided his mailing address in the Application and the Tenant provided her email address in the hearing. They confirmed these addresses in the hearing, as well as their understanding that the Decision and any Orders would be sent to the Parties in this way.

At the outset of the hearing, I advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

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 Parties agreed that the periodic tenancy began on December 15, 2018, with a monthly rent of \$570.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$285.00, a \$100.00 key deposit, and no pet damage deposit. The Agent confirmed that the Landlord still holds these deposits in full.

#1 UTILITIES CLAIMED → \$557.35

The Landlord submitted an invoice from the Town with sewer and water charges for the entire residential property, which consists of 27 units. The total amount divided by 27 comes to \$557.35.

In the hearing, the Tenant said:

I didn't agree to the water or sewer bill. It's not on the lease. I've never received any bills – they are here in the package, but I never received these. So, I did call the [Town] a couple weeks ago, and they said the water and sewer are the property owner's responsibility. My neighbour, Wes, had the same thing happen and he didn't have to pay for the water, and my answer is because it's not in the lease anywhere.

The Landlord submitted a copy of the Parties' tenancy agreement, which contains the Tenant's signature. The Landlord directed my attention to clause 5 of the tenancy agreement, which states:

5. **UTILITIES:** RESIDENT agrees to pay all utilities and/or services based upon occupancy of the premises except natural gas for the hot water. Lessee is required to transfer the Electric Billing [telephone number] into lessee's name.

The Landlord said:

The water and sewer bill was posted on the main bulletin board and was taped to her door. I have been reimbursed on several occasions since I filed it. That's why there's more than one letter given to her. The apartment number is on each letter with their name.

The Landlord submitted a copy of a letters he said he posted on the Tenant's door dated June 1, 2020, with this utilities' billing information.

#2 UNPAID RENT → \$570.00

The Landlord said that rent for May is owing. The Tenant said that she did, "...leave unexpectedly in the middle of April, so I agree to pay the \$570.00, but not the water and sewer bill, because I didn't agree to that."

#3 COMPENSATION FOR OTHER MONEY OWED → \$828.88

The Landlord explained this claim as being his effort and expense for cleaning up the rental unit at the end of the tenancy. He said this included the labour and hauling of a mattress and couch, as well as other repairs and expenses. He referred me to a monetary order worksheet he submitted for this claim, which included the following:

| | Receipt/Estimate From | For | Amount |
|---|-----------------------|---|----------|
| 1 | Landfill | Mattress & couch | \$30.00 |
| 2 | Labour & hauling | Stuff to dump on May 11 | \$106.00 |
| 3 | [Hardware store] | Lacquer thinner | \$11.89 |
| 4 | Labour & fees | Stuff to dump May 12 | \$171.00 |
| 5 | Shower head | Shower | \$11.00 |
| 6 | Bill | Two drapes | \$22.00 |
| 7 | [Hardware store] | Carpet cleaner | \$24.63 |
| 8 | [Grocery store] | Oven cleaner | \$7.83 |
| 9 | Landlord | Pre-treat bad carpet stains & cleaning supplies | \$40.00 |

| | | | |
|----|---------------------|---|-----------------|
| 10 | Landlord | Clean nail polish – carpet and bedroom wall lacquer thinner | \$62.00 |
| 11 | [Paint store] | Paint | \$60.23 |
| 12 | Labour 6 x \$25/hr. | Repairs | \$125.00 |
| 13 | 10.5 hours cleaning | Cleaning | \$157.50 |
| | | TOTAL | \$829.08 |

I found that the Landlord had made a 20-cent addition error, therefore, I find that this claim is really for \$829.08, rather than \$828.88. In the hearing, the Tenant said that she does not dispute any of this third claim for \$828.88, which is what the Landlord claimed for this matter.

Analysis

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

#1 UTILITIES CLAIMED → \$557.35

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

Section 26 of the Act states: “A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the 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.” There is no evidence before me that the Tenant had a right to deduct any portion of the rent from the monthly rent due to the Landlord.

The Tenant disputes that she was advised of her obligation in this regard; however, I find that it is clearly set out in clause five of the tenancy agreement. Further, the Tenant did not dispute that the Landlord posted this billing information on the bulletin board of the residential property or on her door in June 2020. Given the time since this happened and how organized the Landlord is with his evidence, I find it more likely than not that

the Landlord did post the utilities owing on the Tenant's door, but that the Tenant forgot about it.

I find the Landlord's evidence in this matter, overall, to be more compelling than the Tenant's denial of responsibility. As such, I award the Landlord with **\$557.35** from the Tenant pursuant to sections 26, 46, and 67 of the Act.

#2 UNPAID RENT → \$570.00

As the Tenant did not dispute this claim, I award the Landlord with **\$570.00** from the Tenant for rent in May 2021, pursuant to sections 26 and 67 of the Act.

#3 COMPENSATION FOR OTHER MONEY OWED → \$828.88

As the Tenant did not dispute this claim, and pursuant to section 67 of the Act, I award the Landlord with **\$828.88**, as I find that the Landlord provided sufficient evidence to prove the amounts claimed on a balance of probabilities.

Summary and Off Set

I find that these claims meets the criteria under section 72 (2) (b) of the Act to be offset against the Tenant's security deposit of \$285.00 and her \$100.00 key deposit in partial satisfaction of the Landlord's monetary awards.

Awards:

| | |
|------------------|--------------------------|
| Utilities: | \$ 557.35 |
| Unpaid rent: | 570.00 |
| Other: | <u>828.88</u> |
| Sub-total | <u>\$1,956.23</u> |
| Less deposits | <u>(385.00)</u> |
| Sub-total | \$1,571.23 |
| RTB filing fee | <u>100.00</u> |
| TOTAL | <u>\$1,571.23</u> |

Given the Landlord's success in this Application, I also award him with recovery of his **\$100.00** Application filing fee pursuant to section 72 of the Act. I authorize the Landlord to retain the Tenant's \$385.00 security and key deposits in partial satisfaction of these awards. Pursuant to section 67 of the Act, I grant the Landlord a Monetary Order from the Tenant for the remaining award amounts owing of **\$1,571.23**.

Conclusion

The Landlord is successful in his Application, as he provided sufficient evidence to establish his claim on a balance of probabilities. The Landlord is awarded **\$1,956.23** for his claims. He is also awarded recovery of the **\$100.00** Application filing fee from the Tenant.

The Landlord is authorized to retain the Tenant's security deposit of \$285.00 and the \$100.00 key deposit in partial satisfaction of the Landlord's monetary awards. The Landlord is granted a Monetary Order from the Tenant of **\$1,571.23**.

This Order must be served on the Tenant by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

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: December 24, 2021

Residential Tenancy Branch