



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR-S, MNDC-S, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for:

- a monetary order for unpaid rent owed under the tenancy agreement;
- compensation for a monetary loss or other money owed by the tenants;
- authority to keep the tenants' security deposit to use against a monetary award; and
- to recover the cost of the filing fee.

The landlord and the tenant attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

The parties confirmed receiving the other's evidence, and the tenant confirmed receipt of the landlord's application.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters-

The parties were informed at the start of the hearing that recording of the dispute resolution hearing is prohibited under the Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. Both parties affirmed they were not recording the hearing.

Additionally, the other tenant, CE, did not attend. The landlord submitted evidence that service of the application for dispute resolution, evidence, and Notice of Hearing (application package) to CE was sent to the email address of the tenant attending the hearing. Although the tenant submitted that he signed his authority to be served documents by email, I did not see evidence that CE agreed to be served in the same manner. As a result, I cannot find that CE was properly served the landlord's application and notice of this hearing as required by the Act. Therefore, I exclude CE from any further consideration in this matter.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation from the tenant and to recover the cost of the filing fee?

Background and Evidence

The landlord submitted a written tenancy agreement showing a tenancy start day of February 1, 2021, a fixed-term ending on February 1, 2022, monthly rent of \$2,250, and a security deposit of \$1,125 being paid by the tenants.

The tenancy agreement also required the tenants to pay 66% of utilities, hydro, Fortis, and city water.

The landlord retained the tenants' security deposit, making this claim against it.

The landlord's monetary claim is as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. April rent	\$2,250
2. May rent	\$2,250
3. March Fortis	\$147.74

4. March/April hydro	\$124.53
5. April Fortis	\$136.62
6. Hydro, May 1-15 th	\$31.68
7. May 1-15 th Fortis	\$33.30
TOTAL	\$4,973.87

In support of his application, the landlord submitted that when the tenants failed to pay the monthly rent for March, 2021, he served the tenants a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) on March 25, 2021.

The landlord filed an application under the Direct Request process, and on May 3, 2021, an adjudicator with the RTB granted the landlord an order of possession of the rental unit and a monetary order for \$2,350, consisting of the unpaid monthly rent of \$2,250 for March 2021, and the filing fee of \$100. The file number for that application is listed on the style of cause page of this Decision.

The landlord submitted that the tenant ultimately paid the monthly rent for March, but failed to pay the monthly rent for April or May 2021.

The landlord submitted that the tenants failed to vacate the rental unit per the terms of the order of possession, after filing an Application for Review Consideration, which was dismissed.

The landlord submitted that it was necessary to hire a bailiff to have the tenants removed, which occurred on May 17, 2021.

The landlord submitted that he is entitled to the monthly rent for April and May 2021, as the tenant remained in the rental unit until May 17, 2021.

The landlord submitted that the tenant owed, but failed to pay, the utilities, under the terms of the written tenancy agreement. The landlord submitted that tenant was sent a screen shot of the utility bills, to show the amount owed.

The landlord's relevant evidence included copies of the utility bills, the referenced Decision, monetary order and order of possession granted to him by the adjudicator, a monetary order worksheet, and receipts.

In response, the tenant agreed that the monthly rent for April was owed, but that he did not pay the rent for May 2021, as the landlord kept their security deposit. The tenant submitted that he should not pay the utilities for May as he was not living in the rental unit for half a month.

The tenant submitted a written statement claiming that other payments were made to the landlord from the co-tenant's account and that the any costs of the tenancy should be split with the co-tenant.

The landlord replied that the payments made by the tenant were for the February and March 2021 utility bills.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. The claiming party, the landlords here, has the burden of proof to substantiate their claim on a balance of probabilities.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement, whether or not the landlord complies with the Act, the Regulations or the tenancy agreement and is not permitted to withhold rent without the legal right to do so.

In this case, the tenant agreed that the monthly rent for April was owed. I therefore find the landlord has established a monetary claim of \$2,250.

As to the monthly rent for May, 2021, I find the actions of the tenants caused the landlord to suffer a loss of rent revenue for the month of May. The tenants failed to comply with the order of possession by continuing to occupy the rental unit and not paying the monthly rent for May, 2021.

Although the tenant argued that he did not owe all of the rent for May 2021, the tenant was removed from the rental unit and I do not find it reasonable that the landlord could attempt to find another tenant for a partial month when he did not know when the tenants would be removed.

I therefore find the landlord has established a monetary claim of \$2,250 for the loss of rent revenue for May 2021.

As to the landlord's claim for unpaid utility charges, under the written tenancy agreement, the tenants were obligated to pay for 66% of the hydro, Fortis and city bills. I find the landlord submitted sufficient evidence to show that the tenants, owed, but failed to reimburse the landlord these expenses.

As to that amount, I find the landlord submitted sufficient evidence to show the amounts owed and is entitled to the amounts claimed, as listed in the table above. I do not find the landlord has attempted to collect utilities after the time the tenants were removed.

I inform the tenant that he is fully responsible for all the obligations of the tenancy, as this is a co-tenancy, where the tenants are jointly and severally liable.

As the landlord was successful, I grant the landlord recovery of his filing fee of \$100.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$3,948.87 under the following terms:

ITEM DESCRIPTION	AMOUNT AWARDED
1. April rent	\$2,250.00
2. May rent	\$2,250.00
3. March Fortis	\$147.74
4. March/April hydro	\$124.53

5. April Fortis	\$136.62
6. Hydro, May 1-15 th	\$31.68
7. May 1-15 th Fortis	\$33.30
8. Filing fee	\$100.00
9. <i>Less security deposit held</i>	<i>(\$1,125.00)</i>
TOTAL	\$3,948.87

The landlord is provided with this order in the above terms. Should the tenant fail to voluntarily comply with the terms of this Decision, the monetary order must be served to the tenant. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

The tenant is cautioned that such enforcement is subject to recovery from the tenant.

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*. Pursuant to section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: December 15, 2021

Residential Tenancy Branch