



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Vancouver Luxury Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNRL-S, FFL**

Introduction

This hearing was scheduled to deal with a landlord's application for a Monetary Order for unpaid rent and utilities; and, authorization to retain the tenant's security deposit.

The owner of the property appeared for the hearing and agents for the owner's property management company appeared at the hearing. Although the owner was present at the hearing, the owner did not testify or ask any questions. The landlord's agents made all of the submissions during the hearing and were affirmed. There was no appearance on part of the tenants.

Since the tenants did not appear at the hearing, I explored service of hearing materials upon the two named co-tenants.

The landlord's agents submitted that they were granted a Substituted Service Order. I confirmed that the landlords did request and were granted a Substituted Service Order with respect to one of the co-tenants, referred to by initials CK, authorizing the landlord to serve CK by way of email sent to a particular email address.

The landlord's agents submitted to me that they sent an email to the tenant CK, including the proceeding package and evidence, on September 20, 2021. The landlord provided a copy of the email sent to CK on September 20, 2021 and I am satisfied the landlord sent it to the email address authorized in the Substituted Service Order. Accordingly, I proceeded to hear this matter against CK.

As for the other named co-tenant, the landlord's agents acknowledged the other co-tenant was not served. The landlord was agreeable to excluding the other named tenant and proceeding against CK only. I amended the style of cause accordingly.

The tenant did not make any submissions of evidence prior to or during the hearing. Accordingly, this decision is based on the submissions of the landlords only.

Issue(s) to be Decided

1. Have the landlords established an entitlement to recover of the amounts claimed against the tenant for unpaid rent and utilities?
2. Are the landlords authorized to retain the tenant's security deposit?
3. Award of the filing fee.

Background and Evidence

The tenancy started on October 15, 2018 for a fixed term set to expire on September 30, 2020. The landlord collected a security deposit of \$4000.00 and the monthly rent was set at \$8000.00 payable on the first day of every month.

The landlord prepared a move-in inspection report with the tenant at the start of the tenancy.

The tenants did not pay the rent for July 2020, August 2020 or September 2020. On September 8, 2020 the landlord sent a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice") to the tenants, via registered mail, indicating rent of \$8000.00 was outstanding as of September 1, 2020 along with a handwritten notation that a total of \$24000.00 was outstanding for July, August and September 2020.

On September 17, 2020 the tenant sent an email to the landlord stating the tenants had moved out on September 12, 2020.

The landlord conducted a move-out inspection, without the tenants or an agent for the tenants being present, on September 29, 2020. The landlord's agents acknowledged they did not invite the tenants to participate in a move-out inspection with them, explaining they understood the tenants were out of the country at the relevant time.

The landlord's agent continued to correspond with the tenant at regular intervals for the next several months trying to illicit re-payment of the outstanding rent from the tenant in the amount of \$4000.00 per month over six months; however, no payments were received. The landlords proceeded to make this Application for Dispute Resolution and seek compensation in the sum of \$25,765.12, comprised of:

- Unpaid rent for July 2020 through September 2020: \$24000.00
- Utilities for the period up to June 2020: \$1765.12

The landlord's claim for unpaid rent is straightforward and based in the tenancy agreement; however, the claim for utilities was less so, as set out below.

In the details of dispute, the landlords indicate \$1765.12 was outstanding for "utilities up to June 2020". On the Monetary Order worksheet, the landlords indicated \$1765.12 was outstanding for utilities due to "partial payment", and on the tenant's ledger that was submitted into evidence, an entry was made for \$1765.12 with a description of: "Apr 1 ~ Jun 30'20 Utility bills". When I turned to the utility bills provided as evidence, there is a city bill for water, sewer, garbage and recycling (herein referred to as the utility bill) addressed to the owner of the property for the period of April 1 – June 30, 2020 in the amount of \$476.61. In the email exchanges provided as evidence by the landlord, the tenant acknowledges that he owes \$476.61 for utilities and questions how the landlord calculates a greater amount.

The landlord's agent testified that the claim for \$1765.12 was calculated by adding up all the utility bills during the tenancy and deducting the tenant's payments. I noted that the landlord had recorded utility charges and the tenant's payments in the ledger prior to the entry of \$1765.12. I also noted that the landlord had uploaded several utility bills under the description "utility bills deducted" but the sum of all of those bills far exceeded \$1765.12. I asked if the landlord provided the detailed calculation in the evidence package showing how the amount of \$1765.12 was determined and the landlord's agent acknowledged it was not included.

As for the tenant's security deposit, I noted the landlord had not made a deduction for the security deposit on the Monetary Order worksheet. The landlord's agent was of the view the tenant had already given consent for deductions from the security deposit totalling \$3514.27 pursuant to an email exchange between the parties.

Several email exchanges were provided into evidence by the landlords, including the following excerpts:

From the landlord to the tenant on October 30, 2020:

Total deductions are now - cleaning \$430.50, locksmith \$155.82, Utilities \$1765.12, handyman \$1097.57 and garage fob cost is \$65.26

Final total is \$3514.27

The damage deposit held was \$4000 so we will apply \$485.73 to rent for November. Therefore the amount due on the 1st as per the rent payment plan will be \$3514.27

Does that all make sense? let me know if you have questions and how you will be paying the amount?

The landlord sent a follow up email to the tenant on November 2, 2020:

Checking you have received my email from Friday and if you have any questions?

Expecting a payment to come through as per the 6 month plan we set up. If this isn't going to happen then I would appreciate knowing.

The tenant responded on November 2, 2020:

Yes I received it and I've been very busy on my end with family commitments and other personal matters. I'll get a payment out to you middle of this month. As I'm waiting for funds to come through and then I can E transfer you.

Documentary evidence provided by the landlords for this proceeding included a copy of: the tenancy agreement; the 10 Day Notice; the tenant's ledger; a rent repayment plan; condition inspection reports; utility bills; invoices for cleaning and repairs; several email exchanges between the parties; and proof of service of the hearing materials by email.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. Awards for compensation are provided in section 7 and 67 of the Act, and, as provided in Residential Tenancy Policy Guideline 16: *Compensation for Damage or Loss* it is before me to consider whether:

- a party to the tenancy agreement violated the Act, regulation or tenancy agreement;
- the violation resulted in damages or loss for the party making the claim;
- the party who suffered the damages or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Upon consideration of everything before me, I provide the following findings and reasons.

Unpaid rent

The tenancy agreement provides that the tenants were required to pay rent of \$8000.00 per month for a fixed term set to expire September 30, 2020. The landlord provided unopposed submissions, the tenant's ledger, and a copy of a 10 Day Notice, a rent repayment plan, and email communications with the tenants to show that the tenants failed to pay rent for the three months of July 2020 through September 2020.

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations, or tenancy agreement, unless the tenant has a legal right to withhold rent. The Act provides very limited and specific circumstances when a tenant may withhold rent. I was not provided any evidence to suggest the tenants had the legal right to withhold rent.

As for mitigation, the landlord was precluded from issuing a 10 Day Notice for unpaid rent until September 2020 due to the moratorium on evictions that was in place pursuant to a Ministerial Order in response to the Covid-19 pandemic. Although there was a moratorium on evictions due to unpaid rent prior to September 2020, the Ministerial Order that gave rise to the moratorium did not forgive or waive a tenant's obligation to pay rent. As such, upon the end of the tenancy, any outstanding rent incurred during the moratorium became payable.

In light of all of the above, I find the landlords entitled to recovery of unpaid rent in the sum of \$24000.00 for the three months of July 2020 through September 2020, as claimed.

Unpaid utilities

The tenancy agreement provides that rent does not include water, sewer, garbage or recycling. I was provided copies of utility bills for these services that are in the name of the owner of the property. As such, I accept that the landlords are entitled to be reimbursed by the tenant for utility bills incurred during the tenancy.

As issue was the amount claimed by the landlords. The ledger provided as evidence reflects the charge of \$1765.12 is for utilities for the period of April 1 – June 30, 2020

yet the invoice for that same period was only \$476.61. The tenant acknowledged owing \$476.61 for utilities in the email responses he provided to the landlord's agent but the tenant questioned what other utility bills were still owing and how it was calculated. Accordingly, I am satisfied the tenant owes the landlord \$476.61 for utilities.

As for the difference of \$1288.51 [\$1765.12 – \$476.61], I find I am unsatisfied what this represents or that it is owed by the tenant. The landlord's agent stated this was determined by adding up all of the utility bills during the tenancy and deducting the tenant's payments; however, the landlord did not provide a detailed calculation as required under Rule 2.5 of the Rules of Procedure. Nor, is the evidence or calculation so obvious a detailed calculation would not be warranted to verify the claim. As I noted in the "Background and Evidence" section of the decision, the landlord had recorded some charges for utilities and payments in the ledger previous to the entry of \$1765.12 and I am unable to ascertain whether the landlord has double counted any amounts or verify the sum of \$1765.12 that was posted on June 30, 2020 is otherwise correct. Therefore, I limit the landlords' award for unpaid utilities to \$476.61 and I do not make any award to the landlord for the balance of \$1288.51 as I am unable to verify that based on the evidence and submissions before me.

Filing fee

The landlord's claim for unpaid rent had merit and I award the landlords recovery of the \$100.00 filing fee paid for this application.

Security deposit

In filing this Application for Dispute Resolution, the landlord sought authorization to retain the tenant's security deposit. Having been satisfied the landlord is entitled to unpaid rent and utilities that exceeds the security deposit, I authorize the landlord to retain the tenant's security deposit of \$4000.00.

As for the landlord's position that the tenant already authorized the landlord to withhold \$3514.27 from the security deposit, I find the landlord's submissions and evidence do not sufficiently support that. To obtain authorization to retain a security deposit, the landlord must obtain the tenant's written consent to do so or authorization from an Arbitrator. In the email exchanges presented to me by the landlords, I do not see evidence of the tenant providing the landlord with consent to deduct \$3514.27 from the security deposit. Rather, what I see is that the landlord was informing the tenant that the landlord would be making deductions totalling \$3514.27 from the security deposit.

Although the tenant indicated on November 2, 2020 he would make a payment to the landlord the tenant had no dispute that he owed the landlord rent but the tenant did not state he was in agreement with the deductions totalling \$3514.27 and I do not consider silence to constitute consent.

In reviewing all of the emails submitted into evidence, I see that on October 7, 2020 the tenant took responsibility for a few of the deficiencies noted by the landlord during the move-out inspection but the tenant took issue with many other deficiencies by: requesting the landlord provide photographs, denial of taking the sink plug, and indicating the garage door handle issue had been reported to the landlord during the tenancy and was unrepaired by the landlord during the tenancy.

Given all of the above, I reject the landlords position that the tenant gave written consent for the landlord to retain \$3514.27 and I offset the \$4000.00 security deposit against the amounts proven by the landlords by way of this proceeding.

Had the landlords made claims for recovery of cleaning and repairs by way of this Application for Dispute Resolution I would have considered them; however, the landlords did not identify any such claims in making this Application for Dispute Resolution and the Monetary Order worksheet that accompanied it.

Monetary Order

In keeping with all of my findings and awards above, I provide the landlords with a Monetary Order in the following net amount to serve and enforce upon the tenant.

Unpaid rent	\$24000.00
Unpaid utilities	476.61
Filing fee	<u>100.00</u>
Sub-total	\$24576.61
Less: security deposit	<u>(4000.00)</u>
Monetary Order for landlord	\$20576.61

Conclusion

The landlords are authorized to retain the tenant's security deposit in partial satisfaction of unpaid rent and utilities and the landlord is provided a Monetary Order for the balance owing of \$20576.61 to serve and enforce upon 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*.

Dated: March 21, 2022

Residential Tenancy Branch