



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MDCL-S, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the “Act”), for a monetary order for unpaid utilities and missing items, for an order to retain the security deposit and pet deposit (the “deposits”) in partial satisfaction of the claim and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing. All parties confirmed under affirmation that they were not recording this hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid utilities and missing items?
Is the landlord entitled to retain the security deposit and pet damage deposit in partial satisfaction of the claim?

Background and Evidence

The parties agreed that the tenancy began in 2013. In October the parties entered into a new tenancy agreement. Current rent in the amount of \$2,250.00 was payable on the first of each month. The tenant paid a security deposit of \$1,075.00 and a pet damage

deposit of \$500.00. The tenancy ended on July 31, 2021. Filed in evidence is a copy of the tenancy agreement.

The landlord claims as follows:

a.	Unpaid utilities	\$1,308.08
b.	Items missing	\$ 496.96
c.	Filing fee	\$ 100.00
	Total claimed	\$1,905.04

The landlord testified that the tenant did not pay all utilities owed. That they only paid a portion of November 2020 bill leaving a balance due of \$73.52. The landlord stated that the tenant did not pay any of the March 2021 bill of \$542.69 or any of the July 2021 bill of \$641.44 and the remainder of July 2021, was prorated at the amount of \$66.15.

The landlord testified that there were two fans and two heaters missing from the basement. The landlord stated they don't know if the tenant took them.

The tenant testified that they acknowledge that they have not paid the above utilities and wanted the amount to be taken from the deposits. The tenant stated that they had deducted the amount of \$73.52 from the November 2020 utilities because garbage was on the invoice.

The tenant testified that the utilities were always in their own name prior to the landlord purchasing the property. The tenant stated they have never paid for garbage the entire time they lived there. The tenant stated they have no idea how they were paid maybe included in the property tax. The tenant stated that further their tenancy agreement shows garbage was included in the rent. Filed in evidence is a copy of the tenancy agreement.

The tenant testified that they did not take the landlord's heater or fans. The tenant stated that there were multiple coming into the basement because there was a flood.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation, or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

In this case the tenant rents a single family dwelling. The landlord's tenancy agreement filed in evidence appears to a true copy of the original as the copy shows different colours of ink. The agreement show that garbage is not included in the rent. The tenant's copy is black and white and the box for garbage is checked off; however, this can easily be altered.

In this case, the tenant has admitted that they did not pay the utilities. The tenant did not provide any copies of previous utilities from when they were in their own name for me to consider. Therefore, it is reasonable that the tenant would be responsible for the disposal of their own garbage. I find the landlord is entitled to recover the unpaid utilities in the amount of **\$1,308.08**.

I am not satisfied that the tenant took any property belonging to the landlord. Simply because they are no longer at the premises does not mean they were taken by the tenant as there were other people access the property when dealing with the flood. Therefore, I dismiss this portion of the landlord's claim.

I find that the landlord has established a total monetary claim of **\$1,408.08** comprised of the above described amount and the \$100.00 fee paid for this application.

I order that the landlord retain the from the deposit the amount of \$1,308.08. This leaves a balance due to the tenant in the amount of **\$166.92**. Should the landlord fail to return the balance due, I granted the tenant a formal monetary order pursuant to section 67 of the Act.

Conclusion

The landlord is granted a monetary order and a portion of the deposits in full satisfactory of their claim. The tenant is granted a monetary order for the balance remaining of the deposits.

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 11, 2022

Residential Tenancy Branch