



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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DECISION

Dispute Codes **MNDCT, FFT**

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The landlord testified that they received the materials and had not served any evidence of their own. Based on their testimonies I find the landlord duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a monetary award as claimed?

Is the tenant entitled to recover the filing fee from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. This periodic tenancy began on February 1, 2019 and ended on October 31, 2020. The monthly rent was \$2,400.00 and included in the rent was the electrical utilities. The tenant was responsible for paying the utilities for the property and they would then be allowed to deduct the amount payable by the landlord from their monthly rent.

The parties agree that because the utility bill was not available until after the end of the tenancy the amount of \$143.57 is owing to the tenant for utility usage from September 23, 2020 to October 31, 2020.

The parties disagree as to whether the previous utility bill for the period of July 23, 2020 to September 22, 2020 was already paid to the tenant or outstanding and owing. The parties agree that the amount of the full utility bill for that period is \$282.99 and the amount the tenant would be allowed to deduct from their monthly rent is 40% of that figure, \$113.19.

The tenant submits bank statements showing the last deduction made from their monthly rent payment was on September 1, 2020 for the amount of \$138.00. The landlord takes the position that this amount includes the deduction of utilities for the period of July 23, 2020 to September 22, 2020.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The parties agree on most of the factual background. As the parties agree that the amount of \$143.57 is owing, I issue a monetary award to the tenant in that amount accordingly.

I accept the evidence of the parties that the tenant was allowed to deduct the landlord's portion of utilities from their monthly rent. I accept the undisputed evidence of the

parties that the amount that was permitted to be deducted for the period of July 23, 2020 to September 22, 2020 was \$113.19.

Given that the parties are in agreement about the background facts, I find the sole issue before me is whether the amount of \$113.19 has already been deducted from the payment of monthly rent and no longer payable to the tenant. I find the evidence demonstrates that this amount has not been deducted and is currently owing.

I find the evidence of the parties shows that the last deduction from monthly rent was on September 1, 2020. I see no reasonable way that the tenant could have deducted the amount for the period of July 23, 2020 to September 22, 2020 when the utility bill for that period had not yet been issued. I find the tenant's explanation that the amount deducted was for a previous utility bill to be logical and reasonable.

I find that the amount of \$113.19 has not been paid to the tenant and is therefore payable. I issue a monetary award in that amount accordingly.

As the tenant was successful in their application they are entitled to recover their filing fee from the landlord.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$356.76. The landlord must be served with this Order as soon as possible. Should the landlord 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: June 14, 2022

Residential Tenancy Branch