



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDCL-S, MNDL-S, 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 of \$3,100.00; a monetary order of \$1,132.01 for damage or compensation for damage under the Act; for a monetary order of \$0.01 for damages for the Landlord, retaining the security deposit to apply to these claims; and to recover the \$100.00 cost of her Application filing fee.

The Landlord appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenant. The teleconference phone line remained open for over 30 minutes and was monitored throughout this time. The only person to call into the hearing was the Landlord, who indicated that she was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Landlord.

I explained the hearing process to the Landlord and gave her an opportunity to ask questions about it. During the hearing the Landlord was given the opportunity to provide her evidence orally and to respond to my questions. 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.

As the Tenant did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that she served the Tenant with the Notice of Hearing documents by Canada Post registered mail, sent on February 22, 2022. The Landlord provided a Canada Post tracking number as evidence of service. I find that the Tenant was deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Landlord in the absence of the Tenant.

Preliminary and Procedural Matters

The Landlord provided the Parties' email addresses in the Application, and she confirmed these in the hearing. She also confirmed her understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Landlord that pursuant to Rule 7.4, I would only consider her written or documentary evidence to which she pointed or directed me in the hearing. I also advised the Landlord that she is 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 Landlord provided evidence and testimony explaining that In this situation, the "Landlord" before me is a tenant of the original landlord for the entire residential property, for which she pays \$5,600.00 a month. This original tenancy runs from February 15, 2020, through February 15, 2022. The Landlord before me sublet the basement suite of the residential property to the Tenant before me. From here on, I will continue to refer to the original tenant as the "Landlord", and the subletting tenant as the "Tenant". I note that the sublet ended on January 31, 2022, two weeks before the original tenancy ended.

The Landlord said that the tenancy agreement obliged the Tenant to pay her a monthly rent of \$1,900.00, due on the first day of each month. She said that the Tenant paid her a security deposit of \$950.00, and no pet damage deposit. The Landlord said the tenancy ended on January 31, 2022; however, the Landlord said that in March 2022, she had to hire a bailiff to remove the Tenant's daughter and her possessions, pursuant to an order of possession the Landlord had received in another proceeding.

The Landlord submitted a monetary order worksheet setting out the amounts she says are owed to her by the Tenant, as follows:

	Receipt/Estimate From	For	Amount
1	tenancy agreement	December 2021 rent	\$1,200.00
2	tenancy agreement	January 2022 rent	\$1,900.00
3	1/3 of electricity bill	December 2021	\$256.07
4	1/3 of electricity bill	January 2022 (estimate)	\$256.07
5	1/3 of gas bill	December 2021	\$205.13
6	1/3 of gas bill	January 2022	\$164.74
7	Filing fee for a past application	Prior Application	\$100.00
8	Filing fee for current application	This Application	\$100.00
9	Grass cutting		\$50.00
		Total monetary claim	\$4,232.01

#1 & #2 **UNPAID RENT OWING → \$3,100.00**

In the hearing, the Landlord said that she emailed and/or texted the Tenant asking for the rent owing during December 2021, and January 2022. She indicated that the Tenant paid \$700.00 in rent in December 2021, but that she never paid the rest owing, nor any rent in January 2022.

The Landlord submitted copies of texts she wrote to the Tenant dated December 19 and 22, 2021. The Landlord commented on the 10 Day Notice to End the Tenancy for Unpaid Rent, which the Landlord had served to the Tenant earlier in December 2021. The Tenant responded to the December 22nd text, saying: "I am definitely working hard to get this paid. [G.] said it is coming. The pressure is definitely on."

The Landlord submitted an email she wrote to the Tenant dated December 29, 2021, which states [reproduced as written]:

Hi [V.],

I came by the house today and stick 3 forms onto the basement entrance door:

1-month end tenancy notice
RTB-34 service form

RTB-30 Unpaid Rent or Utilities form

I am also attaching these forms here in the e-mail. At this moment, you still owe 1200 rent for the basement for December, 511.20 for utilities, and remove the framework inside the basement back to how it was before. Otherwise, the cost of removing those structures will also be added to your claim.

You need to vacant the basement before Jan 31, 2022

[S.]

#3 & #4 ELECTRICITY BILLS OWING → \$512.14

In clause 3 of the tenancy agreement, the Parties agreed that the rent would include free laundry, a refrigerator, and a stove and oven. However, the boxes that were not checked off as being part of the rent include: water, electricity, internet, heat, natural gas, sewage disposal, and so on. They agreed that the Tenant would be responsible for one-third of these costs, and that the upstairs tenant(s) would be responsible for the other two-thirds. As electricity is not included in the rent, I find that the Tenant owes the Landlord compensation for the electricity used for the basement suite of the residential property.

December Electricity Billing

The Landlord said that the Tenant had paid the electricity bills in the past, but the amount owing in December 2021 was never paid by the Tenant. The Landlord submitted a copy of the electricity bill owing in December 2021, and the total amount billed was \$768.22 for the residential property; however, \$360.17 of this total was the amount of previous charges still owing. The Landlord claimed one-third of the total amount billed: \$256.07.

January Electricity Billing

The Landlord said that the amount owing for January was estimated to be the same as that owing in December or \$256.07. The Landlord also submitted a copy of the electricity bill for December 16, 2021, through to February 14, 2022, which totalled \$599.70.

#5 & #6 GAS BILLS OWING → \$369.87

December Gas Billing

According to the tenancy agreement, the gas payments for the rental unit are also the responsibility of the Tenant – one-third of the total for the residential property - that is. The Landlord submitted copies of the gas bills for December 2021 and January 2022.

The bill dated December 21, 2021, sets out the amount owing as \$615.38; which includes a previous balance due of \$334.17. The Landlord has claimed that one-third of the amount owing is \$205.13, which is 33% of the total amount owing.

January Gas Billing

The Landlord submitted a gas bill dated February 1, 2022, which states that the gas account was terminated on January 31, 2022, making it easier to calculate the amount owed by the Tenant for January 2022.

The gas bill which totals \$494.21 sets out a previous balance owing of \$426.68. This bill indicates that the difference between these amounts is for gas usage from January 25 to January 31, 2022.

#7 & #8 APPLICATION FILING FEES → \$200.00

Claims for recovery of filing fees paid are awarded by the arbitrator at the end of the decision, based on the applicant's success. The claim for #7 is from an application that was heard by another arbitrator. That arbitrator declined to award the Landlord with recovery of this amount. The claim for #8 is for the \$100.00 filing fee for this proceeding.

#9 CUTTING GRASS

There is nothing in the tenancy agreement stating that the Tenant is responsible for cutting the grass. The Landlord failed to explain why she is charging the Tenant this fee.

Analysis

Based on the documentary evidence and the testimony provided during the hearing,

and on a balance of probabilities, I find the following.

#1 & #2 UNPAID RENT OWING → \$3,100.00

Based on the undisputed evidence before me in this matter, I find that the Landlord has provided sufficient evidence to establish that the Tenant owes the Landlord \$1,200.00 in rent for December 2021, and \$1,900.00 in rent for January 2022. I, therefore, award the Landlord with **\$3,100.00** from the Tenant, pursuant to section 67 of the Act.

#3 & #4 ELECTRICITY BILLS OWING → \$512.14

December Electricity Billing

As the Landlord said the Tenant had paid her electricity bills in prior months, I find that the amount owing by the Tenant on this bill is the total of \$768.22, less the prior \$360.17 owing for a total amount for December being \$408.05. One-third of this is **\$136.02**, which amount I award the Landlord for this claim, pursuant to section 67.

January Electricity Billing

As the Tenant did not occupy the rental unit in February 2022, I find it necessary to deduct that portion of the bill from the amount owing by the Tenant. The bill is for eight weeks from mid-December through mid-February. February accounts for one quarter of the total number of weeks, therefore, I find that the Tenant is responsible to pay her share of six weeks of the bill. The total is \$599.70 times 75% is \$449.78. One-third of this amount is **\$149.92**, which I award the Landlord, pursuant to section 67 of the Act.

#5 & #6 GAS BILLS OWING → \$369.87

December Gas Bill

As the Landlord is not claiming any amount owed by the Tenant for previous months, I find that the December gas bill totals should exclude the previous unpaid amount billed plus late payment charge equalling \$334.17. As such, the total of the new portion of the bill owing is $\$615.38 - 334.17 = \281.21 , which is for the residential property, and not

just the rental unit – the basement suite. As such, I find that the Tenant's debt is one-third of the new gas charges or \$93.64 versus the Landlord's claim for \$205.13.

Accordingly, as there is no evidence before me that the Tenant failed to pay the Landlord her portion of the previous bill, I award the Landlord with one-third of the new gas charges equalling **\$93.64**, pursuant to section 67 of the Act.

January Gas Bill

I find that the previous balance owing is set out in the prior bill, which has already been claimed from the Tenant. As such, the amount charged for the last week in January amounts to \$67.53, one-third of which is \$22.49 owing by the Tenant. I, therefore, award the Landlord with **\$22.49** from the Tenant, pursuant to section 67 of the Act.

#7 & #8 APPLICATION FILING FEES → \$200.00

The Landlord had already applied for recovery of the first filing fee she claims in the her Application. In that prior application, the arbitrator declined to award the filing fee.

Res judicata is a rule of law that a final decision determined by an arbitrator with proper jurisdiction and made on the merits of the claim is conclusive, as to the Parties' rights. This constitutes an absolute bar to subsequent claims involving the same matter.

Black's Law Dictionary defines *res judicata*, in part as follows:

A matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment. Rule that a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action.

[emphasis added]

As a result, I find that I do not have the authority to consider the Landlord's first claim for recovery of a filing fee, and I dismiss it without leave to reapply.

As the Landlord has been predominantly successful in the proceeding before me, I award the Landlord with recovery of this **\$100.00** Application filing fee from the Tenant, pursuant to section 72 of the Act.

#9 CUTTING GRASS

Policy Guideline #1, “Landlord & Tenant – Responsibility for Residential Premises” (“PG #1”) clarifies the responsibilities of landlords and tenants regarding maintenance, cleaning, and repairs of residential property, and their respective obligations with respect to services and facilities.

The **Property Maintenance** section of PG #1 states the following about the parties’ responsibilities regarding lawns, gardens, and landscaping requirements, generally.

PROPERTY MAINTENANCE

. . .

3. Generally, the tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass, and clearing snow. The tenant is responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds.
4. Generally, the tenant living in a townhouse or multi-family dwelling who has exclusive use of the yard is responsible for routine yard maintenance, which includes cutting grass, clearing snow.
5. The landlord is generally responsible for major projects, such as tree cutting, pruning and insect control.
6. The landlord is responsible for cutting grass, shovelling snow and weeding flower beds and gardens of multi-unit residential complexes and common areas of manufactured home parks.

There is no indication in the tenancy agreement as to whom is responsible for mowing the lawn. There is no indication that the Tenant has exclusive use of the yard. As such, and given that there is more than one unit in the residential property, I find that it is most consistent with PG #1 for the Landlord to be responsible for cutting the grass in this situation. As such, I dismiss this claim without leave to reapply.

Summary and Offset

I find that this claim meets the criteria under section 72 (2) (b) of the Act to be offset against the Tenant’s \$950.00 security deposit of in partial satisfaction of the Landlord’s

monetary award. I authorize the Landlord to retain **\$950.00** of the Tenant's security deposit in partial satisfaction of the monetary awards granted.

	Receipt/Estimate From	For	Amount Awarded
1	tenancy agreement	December rent	\$1,200.00
2	tenancy agreement	January rent	\$1,900.00
3	1/3 of electricity bill	December 2021	\$136.02
4	1/3 of electricity bill	January 2022	\$149.92
5	1/3 of gas bill	December 2021	\$93.64
6	1/3 of gas bill	January 2022	\$22.49
7	Filing fee for a past application	Prior Application	\$0.00
8	Filing fee for current application	This Application	\$100.00
9	Grass cutting		\$0.00
		Sub-Total	\$3,602.07
		Less Security Deposit	(\$950.00)
		MONETARY ORDER	\$2,652.07

Conclusion

The Landlord is partially successful in this Application, as she provided sufficient evidence to establish the claims noted above. The Landlord is awarded **\$3,602.07** for her claims, including recovery of the **\$100.00** Application filing fee for this proceeding.

The Landlord is authorized to retain the Tenant's **\$950.00** security deposit in partial satisfaction of the awards. For the remaining award owing, I grant the Landlord a **Monetary Order** under section 67 of the Act from the Landlord of **\$2,652.07**.

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: June 08, 2022

Residential Tenancy Branch