



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ALS PROPERTY MANAGEMENT LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant December 07, 2021 (the “Application”). The Tenant applied as follows:

- For compensation for monetary loss or other money owed
- For reimbursement for the filing fee

The Tenant appeared at the hearing. Nobody appeared at the hearing for the Landlord. I explained the hearing process to the Tenant. I told the Tenant they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Tenant provided affirmed testimony.

The Tenant submitted evidence prior to the hearing. The Landlord did not submit evidence. I addressed service of the hearing package and Tenant’s evidence.

The Tenant testified that the hearing package and their evidence were sent to the Landlord by registered mail November 05, 2021; however, the hearing package was not provided until December 08, 2021, and therefore the November 05, 2021 package could not have been the hearing package and Tenant’s evidence.

The Tenant also testified that they re-sent the hearing package and their evidence to the Landlord and provided Tracking Number 106 in relation to this. The Tenant testified that they sent the package to the address for the Landlord on the tenancy agreement. I looked Tracking Number 106 up on the Canada Post website which shows the package was sent December 11, 2021, and delivered to the Landlord December 17, 2021.

Based on the undisputed testimony of the Tenant and Canada Post tracking information, I am satisfied the Landlord was served with the hearing package and Tenant's evidence in accordance with sections 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the "Act"). Based on the Canada Post tracking information, I am satisfied the Landlord received the package December 17, 2021, well before the hearing. Further, I find the Tenant complied with rule 3.1 of the Rules in relation to the timing of service.

Given I was satisfied of service, I proceeded with the hearing in the absence of the Landlord. The Tenant was given an opportunity to present relevant evidence and make relevant submissions. I have considered all relevant evidence provided. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Tenant entitled to compensation for monetary loss or other money owed?
2. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

The Tenant testified as follows.

The parties had a written tenancy agreement. The tenancy started November 01, 2019, and was for a fixed term of one year. Rent was \$2,850.00 due on the first day of each month. The Tenant paid a \$1,500.00 security deposit.

The tenancy ended July 15, 2021.

The Tenant paid a \$300.00 key deposit for three keys at the start of the tenancy. The receipt for the key deposit is in evidence. The Landlord has not returned the key deposit. The Tenant has not returned the keys to the Landlord; however, this is only because the Landlord has not responded to the Tenant since the Tenant sent their notice ending the tenancy. The Tenant has tried to reach the Landlord by mail, email, text message and phone; however, the Landlord has never responded and therefore the Tenant has not had an opportunity to return the keys to the Landlord.

The rental unit was the upper part of a house. There was a tenant in the lower part of the house. The Tenant had to put utilities in their name and the lower tenant was supposed to pay the Tenant for their portion of the utilities. The lower tenant stopped paying for their portion of the utilities and therefore the Tenant is seeking \$95.81 from the Landlord.

The Tenant submitted:

- Correspondence to the Landlord as well as proof it was sent
- Receipt for key deposit
- Utility invoices

Analysis

Section 7 of the *Act* states:

7 (1) If a landlord...does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord...must compensate the [tenant] for damage or loss that results.

(2) A...tenant who claims compensation for damage or loss that results from the [landlord's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage 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.

RTB Policy Guideline 01 states at page nine:

SHARED UTILITY SERVICE

1. A term in a tenancy agreement which requires a tenant to put the electricity, gas or other utility billing in his or her name for premises that the tenant does not occupy, is likely to be found unconscionable as defined in the Regulations.
2. If the tenancy agreement requires one of the tenants to have utilities (such as electricity, gas, water etc.) in his or her name, and if the other tenants under a different tenancy agreement do not pay their share, the tenant whose name is on the bill, or his or her agent, may claim against the landlord for the other tenants' share of the unpaid utility bills.

Pursuant to rule 6.6 of the Rules, it is the Tenant as Applicant who has the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

I accept the undisputed testimony of the Tenant and based on it, as well as the documentary evidence provided, I find the following.

I find the Tenant paid a \$300.00 key deposit at the start of the tenancy. The key deposit should have been returned at the end of the tenancy upon the Landlord receiving the keys back. I find the Tenant has made attempts to contact the Landlord to return the keys to no avail. I award the Tenant the \$300.00 sought. I find it would be unfair to allow the Landlord to keep the \$300.00 key deposit when the Tenant has made attempts to return the keys to the Landlord and the Landlord has not responded.

Pursuant to RTB Policy Guideline 01, the Landlord should not have required the Tenant to put utilities in their name for both the upper and lower units. Further, as stated in RTB Policy Guideline 01, the Tenant can claim against the Landlord for monies owed by the lower tenant for utilities. I accept that the lower tenant owes the Tenant \$95.81 for utilities, and I award the Tenant this amount.

Given the Tenant has been successful in the Application, I award them \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*.

In total, I award the Tenant \$495.81 and issue the Tenant a Monetary Order in this amount pursuant to section 67 of the *Act*.

Conclusion

The Tenant is issued a Monetary Order for \$495.81. This Order must be served on the Landlord. If the Landlord fails to comply with this Order, it 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 *Act*.

Dated: July 12, 2022

Residential Tenancy Branch