



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ANDWORTH ESTATES INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, MNDCL-S, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- a monetary order for unpaid rent, pursuant to section 26;
- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67;
- an authorization to retain the security and pet damage deposits (the deposits), under section 38; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 1:58 P.M. to enable the tenant to call into this teleconference hearing scheduled for 1:30 P.M. The tenant did not attend the hearing. The landlord, represented by agents LS (the landlord) and DS, attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00."

The landlord affirmed the tenant provided the forwarding address (recorded on the cover of this decision) in writing on May 27, 2021.

I accept the landlord's testimony that the tenant was served with the application and evidence (the materials) by registered mail on September 17, 2022 in accordance with section 89(1)(c) of the Act. The landlord mailed the package to the tenant's forwarding address. The tracking number is recorded on the cover of this decision.

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail the tenant is deemed to have received the materials on September 22, 2022 in accordance with section 90 (a) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

Issues to be Decided

Is the landlord entitled to:

1. a monetary order for unpaid rent?
2. a monetary order for loss?
3. an authorization to retain the deposit?
4. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending party; it is the landlord's obligation to present the evidence to substantiate the application.

The landlord affirmed the tenancy started on September 01, 2019 and ended on May 27, 2021. Monthly rent was \$1,600.00, due on the first day of the month. At the outset of the tenancy a security deposit of \$800.00 and a pet damage deposit of \$300.00 were collected. The landlord currently holds the deposits in the amount of \$1,100.00.

The landlord affirmed the tenant agreed to pay the electricity bill.

The landlord is claiming the balance of November 2020 rent in the amount of \$766.41, as the tenant only paid \$839.59.

The landlord's written submission states: "December 18, 2020: [tenant] sent an e-transfer auto deposit in the amount of \$833.59 to my bank account..."

The landlord is claiming the unpaid electricity bill from March 25 to May 25, 2021 in the amount of \$261.04.

The landlord's written submission states: "[tenant] also owes BC Hydro from March 25 – May 25, 2021 billing period. He moved out on May 27, 2021 so he clearly owes this bill."

Analysis

Section 7 of the Act states:

Liability for not complying with this Act or a tenancy agreement

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

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

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. 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.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove the case is on the person making the claim.

Based on the landlord's uncontested convincing testimony, I find the parties agreed to a tenancy and the tenant was obligated to pay monthly rent in the amount of \$1,600.00 on the first day of the month and electricity.

Based on the landlord's uncontested convincing testimony, I find the tenant did not pay the balance of November 2020 rent in the amount of \$766.41 and the electricity from March 25 to May 25, 2021 in the amount of \$261.04.

Section 26(1) of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act.

Based on the landlord's uncontested convincing testimony, I find the tenant breached the tenancy agreement by not paying the electricity bill from March 25 to May 25, 2021 and the landlord incurred a loss in the amount of \$261.04.

I award the landlord the balance of November 2020 rent in the amount of \$766.41 and the electricity from March 25 to May 25, 2021 in the amount of \$261.04.

As the landlord was successful in this application, the landlord is entitled to recover the \$100.00 filing fee, pursuant to section 72 of the Act.

As explained in section D.2 of Policy Guideline #17, the Residential Tenancy Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the security deposit held by the landlord and the monetary amount or cost awarded to a tenant may be deducted from any rent due to the landlord.

I order the landlord to retain the deposits of \$1,100.00 in partial satisfaction of the monetary award.

In summary:

Item	Amount \$
November 2020 rent	766.41
Electricity	261.04
Filing fee	100.00
Subtotal	1,127.45
Minus deposits	1,100.00
Total	27.45

Conclusion

Pursuant to sections 26, 67 and 72 of the Act, I authorize the landlord to retain the \$1,100.00 deposits and grant the landlord a monetary order in the amount of \$27.45

The landlord is provided with this order in the above terms and the tenant must be served with this order as soon as possible. Should the tenant 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: November 03, 2022

Residential Tenancy Branch