



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PURCELL PEAKS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

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

- a monetary order for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application pursuant to section 72.

RF and VW represented the landlord in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording. Both parties were also clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour. Both parties confirmed that they understood.

The tenants confirmed receipt of the landlord's application ('Application'). In accordance with section 89 of the *Act*, I find that the tenants duly served with the Application. All parties confirmed receipt of each other's evidentiary materials, and the hearing proceeded.

Preliminary Issue: Counterclaims

The issues referenced in the landlord's application was discussed with the attending parties. The landlord confirmed that they wanted to claim for money owed in relation to unpaid utilities. The tenants submitted documents for the hearing which referenced "Tenant's Application for Dispute Resolution", as well as supporting materials that

described issues such as the landlord's failure to return personal property that belonged to the tenants.

Rule 2.11 of the RTB Rules of Procedure states the following about the crossing of applications.

2.11 Filing an Application for Dispute Resolution to counter a claim

To respond to an existing, related Application for Dispute Resolution, respondents may make a cross-application by filing their own Application for Dispute Resolution.

The issues identified in the cross-application must be related to the issues identified in the application being countered or responded to.

A party submitting a cross-application is considered the cross-applicant and must apply as soon as possible and so that the respondent to the cross-application receives the documents set out in Rule 3.1 [*Documents that must be served with the Notice of Dispute Resolution Proceeding Package*] not less than 14 days before the hearing and so that the service provisions in Rule 3.15 [*Respondent's evidence provided in single package*] can be met.

In this case, although the tenants did have the option to file a counter claim, the tenants did not file their own application to be crossed with the landlord's.

A party to a dispute resolution hearing is entitled to know the case against him/her and must have a proper opportunity to respond to that case. To proceed with any additional claims that were not properly the Arbitrator at the time of the scheduled hearing would be a breach of the principles of natural justice and procedural fairness. For this reason, the hearing proceeded to deal with the landlord's monetary claims only. The tenants are at liberty to file their own application. Liberty to apply is not an extension of any applicable timelines.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation as requested for money owed?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This application pertains to a tenancy that originally began on November 1, 2018 where the tenants rented one of the upstairs residential suites for \$1,200.00 per month. The tenants paid a \$600.00 security deposit, which the current landlord still holds. The landlord purchased the property from the tenants' previous landlord, which includes three residential suites, and commercial property downstairs. In the past, the tenants had rented the entire property from the previous landlord, and operated a business downstairs. As part of the tenancy agreement, the tenants are responsible for 75% of the utilities, while the tenant in another residential unit is responsible for 25%. When the current landlord took over the tenancy, both parties agreed that the bill would be transferred to the landlord's name, and the tenants would then pay the landlord their share.

The landlord filed this application as the tenants moved out on March 1, 2022, and have not paid any portion of the utility bill for the period of December 10, 2021 to February 28, 2022. The landlord submitted copies of the bill for the referenced billing periods.

Item	Amount
Hydro Bill for December 10, 2021 to February 9, 2022	\$1,972.02
Hydro bill for February 10, 2022 to February 28, 2022	460.46
Recovery of Filing Fee	100.00
Total Monetary Order Requested	\$2,532.48

The tenants do not dispute that they have not paid the above bills, but argued that the landlord has failed to establish the actual amount that should be owed by them. The tenants noted that there were multiple meters for the property, and they believe that electricity consumed in the commercial portion of the building was being metered with the tenants'. The tenants argued that they no longer rent the commercial space, and should not be responsible for the electricity consumed by the baseboards in that space. The landlord submitted in evidence an email sent by the tenant KN on December 18, 2021 about the utility bill. In the email KN states that "meter 5759233 is Suite B...and

“5759178 is our suite and Suite A”. The landlord argued that KN was the party who had full knowledge of the meters, and corresponding suites for each meter.

The landlord argue that no changes have been made since they had taken over the tenancy from the previous landlord, and although the utility bill is now in the landlord’s name, the consumption measured in the utility bill was only for the two suites.

Analysis

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

Liability for not complying with this Act or a tenancy agreement

7 (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.

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the landlord bears the burden of establishing their claim on the balance of probabilities. The landlord must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the landlord must then provide evidence that can verify the actual monetary amount of the loss. Finally, the landlord

must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

I note that this application pertains to money owed rather than monetary loss. Regardless, the burden of proof still falls on the applicant making the claim to support the amount claimed. In this case, the tenants do not dispute that they have not paid any of the utilities for the period referenced in this application. The tenants also do not dispute that they owe 75% of the utility bill as part of the tenancy agreement. However, the tenants note that as the building contains multiple residential and commercial suites, and multiple meters, and argue that the landlords have failed to verify the actual amount owed, and confirm that the amount billed does not include electricity usage by the commercial suites below.

In review of the evidence before me, although the landlord did provide evidence to support that the tenants should have some knowledge of which meters correspond to which suites, the burden still falls on the applicant to support their claim. In this case, as noted by the tenants, there building contains multiple suites and meters. I am not satisfied that the landlord has provided sufficient evidence in this case to support which meters correspond with which specific suites. As I am unable to determine whether the utility bill includes electricity usage by any additional suites other than the two residential suites, I dismiss the landlord's application with leave to reapply. Liberty to reapply is not an extension of any applicable timelines.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the landlord was not successful in this application, I dismiss the landlord's application to recover the filing fee without leave to reapply.

I note that the landlord is still in possession of the security deposit for this tenancy. Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or

pet damage deposit if “at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant.”

As the landlord did file their application within the required time period, and as the landlord’s application was dismissed with leave to reapply, I order that the landlord return to the tenants their security deposit in full, unless a new application is filed within 15 days of the receipt of this decision, or unless the tenants consent to the landlord’s retention of their deposit. If the landlord fails to comply with section 38 of the *Act*, the tenants are at liberty to apply for the return of their deposit, and any associated compensation.

Conclusion

The landlord’s application to recover unpaid utilities is dismissed with leave to reapply.

The landlord’s application to recover the filing fee is dismissed without leave to reapply.

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 08, 2022

Residential Tenancy Branch