



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a tenancy. On March 2, 2022, the landlord applied for:

- a monetary order for unpaid rent, requesting to retain the security and/or pet damage deposit; and
- the filing fee.

The hearing was attended by the landlord and his son, who translated; the tenant did not attend. Those present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The landlord testified he served the Notice of Dispute Resolution Proceeding and evidence on the tenant by sending it to the rental unit by registered mail on March 10, 2022, and provided a tracking number as noted on the cover page of the decision. I find the landlord served the tenant in accordance with section 89 of the Act, and deem the materials received by the tenant on March 15, 2022, pursuant to section 90.

Preliminary Matter

A previous decision, dated March 21, 2022 and noted on the cover page, found that this tenancy ended on February 2, 2022 and awarded the landlord an order of possession and a monetary order for unpaid rent for January 2022 in the amount of \$2,300.00.

Issues to be Decided

- 1) Is the landlord entitled to a monetary order for unpaid rent and utilities?
- 2) Is the landlord entitled to the filing fee?

Background and Evidence

The landlord provided the following particulars regarding the tenancy. It began March 1, 2021, and the tenant vacated the unit on April 5, 2022; rent was \$2,300.00, due on the first of the month; and the tenant paid a security deposit of \$1,150.00, which the landlord still holds.

A copy of the tenancy agreement is submitted as evidence, showing that rent was \$2,300.00, due on the first of the month. The tenancy agreement is silent on utilities.

The landlord testified that no move-in or move-out inspections or reports were completed, the tenant did not provide his forwarding address in writing, and the tenant did not authorize the landlord to keep any portion of the security deposit.

The landlord testified he is seeking to recover unpaid rent and utilities for February, March, and April 2022. The landlord submitted a Direct Request Worksheet, noting that the tenant did not pay rent for February, March, or April 2022, and owes \$295.83 and \$290.33 for 2021 and 2022 utilities. To establish the value of unpaid utilities, the landlord submitted two utilities bills: a 2021 bill for \$355.00 and a 2022 bill for \$871.00. The landlord's application states that the tenant owes utilities for 10 months in 2021 (March to December): $\$355.00/12 \text{ months} \times 10 \text{ months} = \295.83 owing; and 4 months in 2022 (January to April): $\$871.00/12 \text{ months} \times 4 \text{ months} = \290.33 owing.

Analysis

The landlord has applied to recover unpaid rent and utilities, requesting to retain the tenant's security deposit. The landlord has established there was a tenancy agreement with the tenant and rent was \$2,300.00, due on the first of the month.

Section 7(1) of the Act states:

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.

Section 26 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 this Act, the regulations, or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent. The landlord has established that the tenant has failed to comply with the tenancy agreement and section 26 of the Act. The tenancy ended on February 2, 2022. The landlord has provided affirmed testimony that the tenant continued to reside in the rental unit until April 5, 2022.

As stated in Policy Guideline 3, if a tenant continues to occupy the rental unit or manufactured home site after the tenancy has ended (overholds), then the tenant will be liable to pay compensation for the period that they overhold, pursuant to section 57(3) of the Act. Therefore, the landlord is entitled to \$2,300.00 in rent for each of February and March 2022, and \$383.33 for April 2022 ($\$2,300.00/30 \text{ days} \times 5 \text{ days} = \383.33), totalling **\$4,983.33** ($\$2,300.00 \times 2 \text{ months} + \383.33).

The landlord has provided undisputed evidence, including their affirmed testimony, that the tenant owes unpaid utilities for 10 months in 2021 (March to December) and for 2022, inclusive of April. I find the landlord is entitled to unpaid utilities for 10 months in 2021 and for January 2022 to April 5, 2022.

The bill submitted as evidence for 2021 is for \$355.00. I accept the landlord's calculation that the tenant owes \$295.83 in utilities for 10 months in 2021 (March to December): $\$355.00/12 \text{ months} \times 10 \text{ months} = \295.83 owing.

The bill submitted as evidence for the 2022 utilities is for \$871.00. I find the tenant owes \$229.85 in utilities for January to March 2022, and April 1 to 5, 2022, calculated as follows:

$$\$871.00/12 \text{ months} \times 3 \text{ months} = \$217.75 \text{ for January to March 2022}$$

$$\$871.00/12 \text{ months} \times 1 \text{ month}/30 \text{ days} \times 5 \text{ days} = \$12.10 \text{ for April 1 to 5, 2022}$$

$$\$217.75 + \$12.10 = \$229.85$$

Therefore, for 2021 and 2022, I find the tenant owes the landlord **\$525.68** in unpaid utilities ($\$295.83 \text{ for 2021} + \$229.85 \text{ for 2022} = \525.68)

I find, on a balance of probabilities, that the landlord has provided sufficient evidence that they are entitled to recover from the tenant \$4,983.33 in unpaid rent and \$525.68 in unpaid utilities.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the landlord is successful in their application, I order the tenant to pay the \$100.00 filing fee the landlord paid to apply for dispute resolution.

In accordance with section 72 of the Act, I allow the landlord to retain the tenant's \$1,150.00 security deposit in partial satisfaction of the amount owing:

Unpaid rent	\$4,983.33
Unpaid utilities	\$525.68
Filing fee	\$100.00
Security deposit	-\$1,150.00
Amount owed to landlord	\$4,459.01

Conclusion

The landlord's application is granted.

The landlord is granted a monetary order for \$4,459.01. The monetary order must be served on the tenant. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 22, 2022

Residential Tenancy Branch