



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, OPL, MNRL, MNDCL, FFL / CNR

Introduction

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (the “**Act**”). The landlords’ application for:

- an order of possession for non-payment of rent pursuant to section 55;
- an order of possession for the landlord’s use of the residential property pursuant to section 55;
- a monetary order for unpaid rent (\$1,700), unpaid utilities (\$176.56), and registered mail fees (\$13.59) pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

And the tenant’s application for the cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent (the “**Notice**”) pursuant to section 46.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:58 am in order to enable the tenant to call into the hearing scheduled to start at 9:30 am. The landlords attended the hearing and were 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 Dispute Resolution Proceeding. I used the teleconference system to confirm that the landlords and I were the only ones who had called into the hearing.

Landlord DW testified she served that the tenant with the notice of dispute resolution package, amendments to the application, and supporting documentary evidence via registered mail on July 27, 2022 and September 10, 2022. She provided Canada Post tracking numbers confirming these mailing which is reproduced on the cover of this decision. I find that the tenant is deemed served with these documents five days after DW mailed them, in accordance with sections 88, 89, and 90 of the Act.

DW testified that the tenant did not serve the landlords with any documentary evidence in repose to the landlord’s application, nor the notice of dispute resolution package for the tenant’s application.

DW advised me that the tenant vacated the rental unit as of September 21, 2022, and that she obtained an order of possession on October 6, 2022 at another dispute resolution proceeding (file number on the cover of this decision). As such, the portion of

the landlords' application for orders of possession, and the entirety of the tenant's application, are moot. I dismiss them without leave to reapply.

Preliminary Issue – Amendment of Landlords' Application

At the hearing, DW advised me that the amount of unpaid rent and utilities had changed since the landlords made their application and amendments. She testified the tenant failed to pay any rent for July, August, or September 2022 in the total amount of \$5,100 and failed to pay any portion of the utilities owed for June, July, August, or September 2022 in the total amount of \$320.40.

Rule of Procedure 4.2 states:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

In this case, the landlords seek compensation for unpaid rent and utilities that has increased since they first applied for dispute resolution, I find that the increase in the landlords' monetary claim should have been reasonably anticipated by the tenant. Therefore, pursuant to Rule 4.2, I order that the landlords' application be amended to increase their claim for unpaid rent to \$5,100 and for unpaid utilities to \$320.40.

Issues to be Decided

Is the landlord entitled to:

- 1) a monetary order for \$5,453.99;
- 2) recover the filing fee;
- 3) retain the security deposit in partial satisfaction of the monetary orders made?

Background and Evidence

While I have considered the documentary evidence and the testimony of the landlords, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the landlords' claims and my findings are set out below.

The parties entered into a written tenancy agreement starting December 11, 2021. Monthly rent was \$1,700 and was payable on the first of each month. The tenant paid the landlord a security deposit of \$850. At a prior dispute resolution hearing, the

presiding arbitrator ordered that the landlords may retain \$100 of the security deposit in satisfaction of their filing fee. The landlords hold the balance of the security deposit (\$750) in trust for the tenant.

The tenancy agreement submitted into evidence by the landlords is silent as to who is responsible for the payment of utilities. DW testified that the parties verbally agreed that the tenant is responsible for 50% of the utility bills for the residential property (the residential property is a single detached home containing two rental units). She testified that the tenant paid 50% of the utility bills from January to May 2022.

DW testified that the tenant failed to pay any rent for July, August, or September 2022 (\$5,100 total). Additionally, she testified that the tenant failed to pay any of the utility bills for June, July, August, or September 2022. The landlord did not submit copies of these bills into evidence. However, she testified that the utilities bills were as follows:

| Month | Fortis | BC Hydro | |
|--------------|-----------------|-----------------|-----------------|
| June | \$60.98 | \$0.00 | |
| July | \$50.54 | \$239.33 | |
| August | \$55.55 | \$0.00 | |
| September | \$59.67 | \$174.73 | |
| Total | \$226.74 | \$414.06 | \$640.80 |

The landlord seek payment of \$320.40, representing half of the total amount of the utility bills.

DW testified that she posted each of these bills on the rental unit door as she received them.

DW testified that she incurred \$27 in registered mail fees for serving the application materials and amendments on the tenants. She seeks their recovery.

In total, the landlords seek a monetary order of \$5,447.40 representing the following:

| Description | Fortis |
|----------------------|-------------------|
| Rent arrears | \$5,100.00 |
| Utilities arrears | \$320.40 |
| Registered mail fees | \$27.00 |
| Total | \$5,447.40 |

Analysis

I accept DW's undisputed testimony in its entirety. I found her evidence to be internally consistent, clear, and believable. Based on her testimony, I find that, notwithstanding

the fact the utilities were not referenced in the written tenancy agreement, that the tenant was responsible for paying 50% of the utility bills for the residential property. I accept that she did so for the first five months of tenancy, and that she stopped paying in June 2022.

I accept DW's evidence that, in total, the tenant's share of the utilities is \$320.40. I order that the tenant pay the landlords this amount.

I find that the tenant was obligated to pay \$1,700 per month pursuant to the tenancy agreement and that the tenant failed to pay monthly rent for July, August, or September 2022. Accordingly, I order that the tenant pay the landlords \$5,100.

The Act does not permit an applicant to recover disbursements such as the cost of registered mail. It only provides for the recovery of damages resulting from a respondent's breach of the Act. I do not find that the cost of registered mail is such an expense. Rather, it is a disbursement in the ordinary course of litigation. As such, I dismiss this portion of the landlords' application.

Pursuant to section 72(1) of the Act, as the landlord have been successful in the application, they may recover the filing fee from the tenants

Pursuant to section 72(2) of the Act, the landlords may retain the balance of the security deposit (\$750) in partial satisfaction of the monetary orders made above.

Conclusion

Pursuant to sections 67 and 72 of the Act, I order that the tenant pay the landlords \$4,697.40, representing the following:

| Description | Fortis |
|-------------------------|-------------------|
| Rent arrears | \$5,100.00 |
| Utilities arrears | \$320.40 |
| Filing fee | \$100.00 |
| Security deposit credit | -\$750.00 |
| Total | \$4,770.40 |

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 15, 2022

Residential Tenancy Branch