



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, RP, LRE, OLC, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for:

- a Monetary Order of \$359.88 for damage or compensation under the Act;
- an Order for repairs to the unit or property, having contacted the landlord in writing to make repairs, but they have not been completed;
- an Order suspending or restricting the Landlord's right to enter;
- an Order for the Landlord to Comply with the Act or tenancy agreement; and
- recovery of his \$100.00 Application filing fee.

The Tenant and the Landlord appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I considered service of the Notice of Dispute Resolution Hearing and evidentiary submissions. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application and Notice of Hearing. The Tenant testified that he served the Landlord with his Application and Notice of Hearing documents by Canada Post registered mail, sent on July 14, 2022. The Landlord confirmed receipt of the Notice of Hearing documents, but he mentioned that some of the Tenant's other evidence came late. I note that some of the Tenant's evidence was submitted to the RTB three days prior to the hearing.

The Landlord said he served the Tenant with his evidence on November 14 by email, a

communication means that the Parties had previously used. However, as the hearing was on November 18, 2022, the Landlord's evidence was also served late to the Tenant three days late.

Rule 3.1 states that an applicant **must**, within three days of the Notice of Hearing proceeding package being made available to the applicant by the RTB, serve each respondent with copies of all of the documents contained therein. **Rule 3.5** states that the applicant must be prepared to prove to the satisfaction of the arbitrator at the hearing, that each respondent was served with the Notice of Hearing documents, pursuant to the Act and Rules. [emphasis added]

Rule 3.15 states that all of the respondent's evidence should be submitted to the RTB and served on the applicant as soon as possible, and not less than seven days before the hearing. **Rule 3.16** states that the respondent must be prepared to prove to the satisfaction of the arbitrator at the hearing, that each applicant was served with the Respondent's evidence, as required by the Act and Rules. [emphasis added]

Accordingly, based on the evidence before me in this matter, I will consider only the evidence that was submitted to the RTB on time, as I find that the evidence submitted late, was in all likelihood, served to the other Party late, as well.

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application and they confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Prior to their testimony, I advised the Parties that Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance, the Tenant indicated different matters of dispute on his Application, which I find are not all sufficiently related to all be decided in this one-hour proceeding. As such, I asked the Tenant to tell me which of his claims is his highest priority for us to review in this hearing. The Tenant said the monetary claim was his highest priority. The Tenant's other claims are dismissed with leave to reapply.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their eligible written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order, and if so, in what amount?
- Is the Tenant entitled to Recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on June 1, 2017, with a monthly rent of \$1,036.00 plus \$190.00 for utilities, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$486.50, and no pet damage deposit. The Landlord confirmed that he still holds the security deposit in full for the Tenant.

MONETARY CLAIM → \$359.88

In the hearing, the Tenant said:

On my current lease it lays out that \$1,036.00 is for the rent. Previously, it was \$190.00 for utilities that was written on the lease. In our first meeting, he handed me an invoice for an additional \$540.00, and a copy for the downstairs tenant. I requested and reviewed the bills. His invoice went to \$398.00. I didn't review bills until he served me with 10 Day Notice for unpaid utilities. There was no due date on these bills, so eviction notice was served without a date that they were due, even if they were legitimate bills.

The Landlord said:

It was May 9 that I met him to discuss the bills running high and the reasons for those. I saw he had a full marijuana operation with lights and an exhaust system. When I told him that [the utilities] had been high, he said he expected a visit from me [*The Tenant later denied having said this – said he couldn't remember saying this*]. I told him, 'You are using a lot more than \$190.00 – I can't pay for your marijuana operation'. He asked for a month and I gave him a week to take it down. He asked for the bills and I delivered them the same day.

On May 19, I pointed out the addendum clarifying that the utilities are paid by you, and there is no marijuana growing or smoking allowed. May 24th, I served the 10 Day Notice 15 days after I had sent him the bills. The only money I asked from him was the difference in the utilities he was paying and what he was using.

I asked the Landlord if the tenancy agreement disallows growing cannabis in the rental unit. He said:

It's from the rules in general – he is not allowed a full-on growth operation – nothing in the tenancy agreement allows this; you can't run an illegal operation from my property. Nothing is mentioned about not growing illegal marijuana, so either way, I couldn't list every illegal thing he can't do.

He started this operation once I bought this property. Once it was sold, the bills jumped so I contacted the seller and when they were showing, no marijuana tents were in there. It happened after I bought the property. There are things in the tenancy agreement that pinpoint that you can't do an illegal operation.

There were a lot more than four plants, and I checked with my insurance, and the makeshift tents are a fire hazard, and dangerous to other tenants. He was never contacted before the tents cropped up in there. He also opened up the tent in front of me and my co-owner; I didn't call the cops on him. He agreed to removed them and I was just being cooperative.

I asked the Landlord if the plants are gone now, and he said:

The last time I sent a friend over to the property, he saw a plant in the window and [the Tenant] had agreed not to have any plants in there. I'm not sure if they have one or not, but I think there's at least one tent.

The Tenant said:

First, when we had our first meeting, he showed up with less than 24 hours notice, but I still let him come in. They took a look in my bedroom and saw this tent. Yes, there's cannabis in there.... I said I'd get them out in a week, and I did. For me, I love to grow plants; it's a hobby, but I would rather have respect for the owner. The [Landlord's] friend showing up was without any notice, though. He just pulled up in a black truck after 7:10 in the evening; this was the day I got the eviction notice. I still don't know this man was who showed up on the 24th. The Landlord asked me to entertain this man. There is no cannabis in the house.

I asked the Tenant if does not owe the Landlord this money for utilities, and he said:

When I reviewed the bills, it was \$540.00, which included all of his utility

connection deposit, and he then with lowered it to \$359.88, reviewing closer, I found another security deposit that he had paid that it appeared was being transferred to the tenant.

I understand a full scale cannabis grow op would use lots of electricity, and might have mould damage and be a fire hazard. But I treat this place as my home, and this tent is a 4 x 4 – it has one light inside and a fan, so it wasn't an operation, as it sounds like a big deal.

I asked the Landlord why the Tenant owes him \$360.00 in utilities, and he said:

The bills are for the extra amount, because of a spike in the bills in what he was doing in this property. They were considerably high. The \$190.00 was the last year's average, and he suddenly started using a lot more, and the difference was considerable. I sent him the bills that use to be \$300.00 a month, but jumped to \$650.00 and \$640.00 – I didn't visit him until I received these bills. I thought, maybe it was too cold, and he was running the gas all the time, but when I arrived there and found the grow op and compared the bills for the other units.

From evidence the Tenant submitted in June 2022, which, I therefore, find was served on time, the Tenant included two electricity bills and three gas bills. However, he did not provide anything analyzing the amounts set out on these bills or what is reasonable and what is not reasonable of the amount claimed by the Landlord.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Before the Parties testified, I let them know how I analyze the evidence presented to me. I said that a party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. Policy Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, the Landlord must prove:

1. That the Tenant violated the Act, regulations, or tenancy agreement;
2. That the violation caused the Landlord to incur damages or loss as a result of the violation;
3. The value of the loss; and,

4. That the Landlord did what was reasonable to minimize the damage or loss.
("Test")

MONETARY CLAIM → \$359.88

I find that the Tenant has provided insufficient evidence to explain this claim and how the Landlord violated the legislation or tenancy agreement in claiming these utilities from the Tenant. I find that the Tenant acknowledged that he was using a light and fan to grow cannabis plants in a tent, and that this in all likelihood increased the utilities costs incurred for his unit. As the Tenant has failed to fulfil his burden of proof on a balance of probabilities for this first step of the Test, I **dismiss this claim without leave to reapply**.

Given that the Tenant is unsuccessful in this claim, I decline to award him recovery of his \$100.00 Application filing fee, pursuant to sections 72 and 67 of the Act. The Tenant's other claims are **dismissed with leave to reapply**.

Conclusion

The Tenant is unsuccessful in his claim for a monetary order from the Landlord, as he failed to provide sufficient documentary evidence or testimony to prove his claim on a balance of probabilities. The Tenant's claim for recovery of the \$100.00 filing fee is also dismissed without leave to reapply. The Tenant's other claims are dismissed with 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: December 05, 2022

Residential Tenancy Branch