



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNRL-S, MNDCL-S, FFL**

Introduction

This hearing dealt with an application by the landlord pursuant to the Residential Tenancy Act ("Act") for orders as follows:

- for a monetary order for unpaid rent and utilities and to retain the security deposit pursuant to section 67 of the Act
- for a monetary order for compensation for damage or loss and to retain the security deposit pursuant to section 67 of the Act
- recovery of the filing fee pursuant to section 72 of the Act

Landlord LO and tenant KS appeared. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

Both parties confirmed they were not recording the hearing pursuant to RTB Rules of Procedure 6.11. The parties were affirmed.

The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the Act.

Issue(s) to be Decided

1. Is the landlord entitled to an order for compensation for unpaid rent and utilities and entitled to retain the security deposit?
2. Is the landlord entitled to an order for compensation for damages and entitled to retain the security deposit?
3. Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

The tenancy commenced September 7, 2021 on a month to month basis. Rent was \$1,350.00 per month. The landlord still holds a security deposit of \$675.00. The tenant no longer occupies the rental unit.

The landlord is seeking compensation for one month's rent and unpaid utilities. He testified that the tenant was served a One Month Notice on April 6, 2022, to vacate on May 31, 2022. The tenant advised the landlord on May 1, 2022 by email that she moved out on April 30, 2022. The landlord alleged that the tenant did not notify the landlord prior to May 1, 2022 of her intent to move. She did not pay rent for the month of May 2022.

The landlord is also seeking compensation for his ferry expenses, gas and food of \$302.02. He testified that he had to incur these expenses to travel to the tenant's rental unit as a result of her claiming there was an emergency with the propane in the unit. No such emergency existed. Therefore, he stated his trip was unnecessary.

The tenant in her evidence did not dispute that the utilities were unpaid, or that the landlord is entitled to compensation for the utilities. She stated that she consented to the landlord retaining part of her security deposit for that purpose. However, she felt that she needed to leave the rental unit on an urgent basis as she did not feel safe. She testified that she felt unsafe because the landlord wished a gasfitter to enter her residence while she wasn't there. She also stated that the landlord never informed her that he was coming to the rental unit, otherwise she would have cleared up what she felt was a misunderstanding about the propane situation in the rental unit.

Analysis

Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. As noted in Policy Guideline #16, in order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove their entitlement to a claim for a monetary award.

RTB Policy Guideline 3 states in part:

Where a tenant vacates or abandons the premises before a tenancy agreement has ended, the tenant must compensate the landlord for the damage or loss that results from their failure to comply with the legislation and tenancy agreement (section 7(1) of the *RTA* and the *MHPTA*). This can include the unpaid rent to the date the tenancy agreement ended and the rent the landlord would have been entitled to for the remainder of the term of the tenancy agreement.

The landlord served notice to end the tenancy on May 31, 2022. If the tenant wished to leave prior to that date she was required to give the landlord proper notice under section 45 of the Act. I do not find that the tenant had a compelling reason to end the tenancy without giving notice to the landlord. I find that the landlord is entitled to compensation for \$1,350.00 for one month's rent for the month of May 2022.

The tenant did not dispute that the landlord is entitled to be compensated for unpaid utilities. I find that the landlord is entitled to compensation in the amount of \$215.31, consisting of \$152.39 for unpaid utilities prior to April 2022, and \$62.92 for unpaid utilities for April 2022.

The landlord's expenses to travel to the rental unit are not compensable. Landlords incur expenses incidental to their rental properties which include travel. While the emergency didn't exist, I do not find that the tenant deliberately misled the landlord regarding the state of the rental unit. The landlord's expenses are significant, however renting a property that is a significant distance from the landlord is the choice of the landlord.

The landlord's application is granted, and the landlord is entitled to retain the security deposit in partial satisfaction of the compensation. As the landlord is successful in his application, he is also entitled to recover the filing fee for the application.

Conclusion

The landlord is entitled to a monetary order as follows:

Compensation	Amount
Unpaid rent, May 2022	\$1,350.00

Unpaid utilities	\$215.31
Filing Fee	\$100.00
Security Deposit	(\$675.00)
Total	\$990.31

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: January 24, 2023

Residential Tenancy Branch