



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Introduction**

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent and utilities - Section 67;
2. A Monetary Order for damages to the unit - Section 67;
3. A Monetary Order for compensation - Section 67;
4. An Order to retain the security deposit - Section 38; and
5. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### **Preliminary Matters**

The Tenants confirmed receipt of the Landlord’s evidence package however no utility bills were included. The Landlord does not recall whether those bills were included in the materials.

Rule 3.14 of the RTB Rules of Procedure provides that evidence that is intended to be relied on at the hearing by one party must be received by the other party. Given the Landlord’s uncertainty that the utility bills were included with their evidence package and the Tenants’ evidence that no utility bills were included I find on a balance of probabilities that the Landlord has not substantiated that the Tenants received these bills as evidence. I therefore decline to consider the utility bills as evidence for the Landlord’s claims.

The Landlord's application sets out a monetary claim limited to a total of \$18,097.00 with a monetary order worksheet that sets out the rental claim, a claim for late rent fees and the included damage claim of \$5,000.00 with a note that details will be added and amount adjusted. The Landlord made their application before the tenancy ended. The Landlord subsequently provided a monetary order worksheet as evidence with a increased amount being claimed under damages and compensation and with details indicating additional claims than were indicated in the Landlord's application. The Landlord made no application to amend their claimed amounts or to add additional claims.

Section 59(2)(b) of the Act provides that an application for dispute resolution must include full particulars of the dispute that is to be the subject of the dispute resolution proceedings. Rule 2.2 of the Residential Tenancy Branch Rules of Procedure provides that claims are limited to what is stated in the application. Given the lack of details on the Landlord's monetary work sheet for their claim for damages that were made before the tenancy ended I consider that the Landlord did not include full particulars of these claims in the original application. As the Landlord did not amend its application to provide full particulars for the increased and added claims for damages and compensation, but considering that there may be reasonable grounds for these claims, I dismiss the claims for damages and compensation with leave to reapply other than the claims for utilities, retention of the security deposit, late rent fees and the filing fees. Leave to reapply is not an extension of any limitation period. The Landlord's claims for rent, utilities, late fees, the filing fee, and retention of the security deposit remain for consideration herein.

#### Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed for rent, utilities and late rent fees?

Is the Landlord entitled to retention of the security deposit?

Is the Landlord entitled to recovery of the filing fee?

Relevant Background and Evidence

The following are agreed or undisputed facts: the tenancy under written agreement started on September 1, 2020 and ended sometime between May 12 and 15, 2022. Rent of \$2,893.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$1,425.00 as a security deposit. The tenancy agreement includes a term in the addendum for late rent fees of \$75.00 on the first occurrence of late rent payment and \$150.00 thereafter. The Tenants did not pay rent for the months March, April and May 2022.

The Landlord claims unpaid rent for March, April and May 2022. The Landlord also claims rent for June 2022 that was lost due to the damages left in the unit. The Tenant states that the rent was unpaid for March, April and May 2022 due to the failure of the Landlord to provide heat during the winter months. The Landlord claims late rent fees.

The Landlord claims costs for water utilities of \$168.30 and \$160.50 for the periods October to December 2021 and January to March 2022. The rent does not include the cost of these utilities. The Landlord states that the Tenants were given copies of the bills as they became due. The Tenant states that these amounts were paid to the Landlord by e-transfer during the tenancy.

Analysis

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement whether or not the landlord complies with this Act, the regulations or the tenancy agreement. Given the undisputed evidence of unpaid rent for the period March to May 2022 inclusive I find that the Landlord has substantiated the claim to **\$8,679.00** (2,893.00 x 3). As the claim for June 2022 rent is dependent on the determination of damages to the unit, the claims for which have been dismissed above with leave to reapply, I also dismiss this claim with leave to reapply to be considered

with the damages claims. The Tenants remain at liberty to make their own application for dispute resolution in relation to any losses they may have suffered or costs incurred as a result of a breach of the Act or tenancy agreement by the Landlord.

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that costs for the damage or loss have been incurred or established. As there are no utility bills to consider and as the Tenant's evidence indicates that these utilities were paid, I find on a balance of probabilities that the Landlord has not substantiated the utility costs claimed and I dismiss this claim.

Section 7(1)(d) of the Regulations provide that, subject to subsection (2), an administration fee of not more than \$25.00 for the return of a tenant's cheque by a financial institution or for late payment of rent. Section 6(3)(a) of the Act provides that a term of a tenancy agreement is not enforceable if the term is inconsistent with this Act or the regulations. As the term contained in the addendum provides for a larger later rent fee than allowed under the Regulations I find that this term is inconsistent with the Regulations and therefore unenforceable. I dismiss the claim for late rent fees.

As the Landlord's claims have met with some success, I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$8,779.00**. Deducting the security deposit plus zero interest of **\$1,425.00** leaves **\$7,354.00** owed to the Landlord.

### Conclusion

**I order** that the Landlord retain the **deposit** and interest of \$1,425.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$7,354.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: January 18, 2023

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Residential Tenancy Branch