



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

DECISION

Introduction

This hearing dealt with the Landlord's November 8, 2024 Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- compensation for unpaid rent
- recovery of the Application filing fee.

The Tenant's January 3, 2025, Application, crossed to the earlier Application by the Landlord, was for:

- compensation for monetary loss/other money owed
- recovery of the Application filing fee.

The Tenant and the Landlord attended the scheduled hearing.

Service of the Notice of Dispute Resolution Proceeding and evidence

At the outset of the hearing, each party confirmed they received the Notice of Dispute Resolution Proceeding and prepared evidence from the other.

Preliminary Matter – previous Application and decision

The Tenant obtained a decision from the Residential Tenancy Branch on October 24, 2024, concerning the return of the security deposit after the tenancy ended. An adjudicator, based on the Tenant's direct request (a non-hearing request to the Residential Tenancy Branch with evidence) granted double the deposit amounts plus interest to the Tenant via monetary order for \$5,817.16.

After this, the Landlord filed for a review consideration of that decision and monetary order. On November 12, an adjudicator dismissed the Landlord's application for review consideration. The Landlord brought this present Application on November 8, 2024.

The Landlord on January 21, 2025, messaged to the Tenant directly with a \$2,000 payment toward that monetary order amount. In the hearing, the Landlord clarified that they would pay an additional \$2,000 on February 15, and the final balance on March 15, 2025. I reviewed this with the Landlord and the Tenant in the hearing. The Tenant confirmed they received \$2,000 from the Landlord as of the date of this hearing.

Issues to be Decided

- a. Is the Landlord entitled to compensation for unpaid rent?
- b. Is the Tenant entitled to compensation for monetary loss/other money owed?
- c. Is the Landlord eligible for recovery of the Application filing fee?
- d. Is the Tenant eligible for recovery of the Application filing fee?

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant to my decision.

The Landlord and the Tenant each provided a copy of the tenancy agreement they had in place for the start date of July 1, 2022. This was for a fixed-term ending on February 28, 2023, then set to revert to a month-to-month arrangement after that.

The rent amount in the agreement was \$2,890, payable on the first day of each month. This agreement indicates that utilities are not included in this rent amount. Prior to this, the rent included water and sewage disposal utilities.

The Landlord and the Tenant had an existing agreement that started in 2019. At that time, the Tenant paid a deposit of \$1,400 and a pet damage deposit of \$1,400.

The tenancy ended via the Landlord's own use of the rental unit for which they served a tenancy-end notice. The Tenant moved out from the rental unit on July 15, 2024, with the tenancy end-date being July 31, 2024.

- a. *Is the Landlord entitled to compensation for unpaid rent?*

The Tenant provided post-dated cheques to the Landlord on a regular basis. The Landlord set out that they would inquire with the Tenant about providing more cheques when the number of post-dated cheques they already received was depleted. The Tenant provided a screenshot from February 2023 showing that this was the system they had in place.

The Landlord prepared a written statement addressing their claim for rent compensation on November 1, 2024. The Landlord set out the following:

Shortly after the tenant moved out on July 15, 2024 and before the tenancy ended on July 31, 2024 a missing rent payment from Mar 2023 was identified with a total value of \$2890 (rent) + \$49.73 (utilities) = \$2939.63 when I went over the bank account on July 28, 2024. We contacted the tenant on July 28 through text and email. [The Tenant] replied through text on July 29 that "I will check with my bank".

The Landlord presented that, since that time, the Tenant did not respond to further messages from the Landlord about this unpaid rent amount. This was a total of 8 times the Landlord tried to inquire with the Tenant.

The Landlord in their evidence included the following:

- summary of rental deposits from October 2022 to October 2024 from the bank – no cheque deposit shown for March 2023
- copy of their emails to the Tenant, screenshots of their text messages – showing the Landlord's statement "We want to pay you the rent deposit as soon as possible." -- late August through to October 2024
- the Tenant's text reply "I will check with my bank."
- the Landlord repaid the Tenant one-half of July 2024 rent (for the Tenant's mid-July move-out), as well as the equivalent of one month's free rent because of the tenancy-end notice type (*i.e.*, the Landlord's own use of the rental unit)

The Landlord also set out that they had the bank go through all images of deposited cheques, and the bank could not locate the cheque provided for March 2023. The Landlord acknowledged they did not claim against the deposits post-tenancy, and the previous Tenant's Application (set out in Preliminary above) dealt with the Landlord's return of the deposit to them.

The Landlord maintains that the Tenant filed the direct request to the Residential Tenancy Branch, despite knowing that there was a missing rent cheque which the

Landlord identified and inquired about before the end of the tenancy. They awaited a reply from the Tenant in order to resolve this, and the Tenant chose not to respond.

In sum, the Landlord claims for the March 2023 rent in full (\$2,980), and the utility amount of \$49.63, totaling \$2,939.63. The Landlord showed they made the effort to rectify this with the Tenant after the tenancy ended; instead, the Tenant filed a direct request to the Residential Tenancy Branch for the return of the deposits.

The Tenant provided a written response dated January 10, to the Landlord's Application, raising the following points:

- the Landlord messaged the Tenant on July 28 to inquire on the missing March 2023 rent payment – the Tenant provided images of the post-dated cheques they provided to the Landlord in response
- individual cheques (numbered 751 and 757) were not deposited by the Landlord, from the Tenant's bank statements
- they fulfilled their obligation as the Tenant by providing these post-dated cheques to the Landlord – 16 months passed and the Landlord did not mention this to the Tenant – to pay the amount now puts the Tenant in hardship, citing their other expenses associated with moving out from the rental unit
- the Landlord intended to withhold the deposit "without consent and without cause", even after the Tenant provided a forwarding address
- the Tenant believes the Landlord does not want to pay the outstanding order returning the deposits to them, hence the Landlord's claim for this missing rent and utilities

In the hearing, the Landlord set out their recall of the challenges that their family was facing around March 2023. This involved family members in the hospital. This caused the Landlord to miss depositing that month's rent and utilities cheques, and the Landlord did not realize this at the time.

The Tenant cited the Landlord's responsibility to deposit the cheques previously provided to them. To this, the Landlord cited the bank policy that a duration of 6 months had passed, making the cheque "uncashable."

b. Is the Tenant entitled to compensation for monetary loss/other money owed?

The Landlord presented a copy of the agreement signed by both the Tenant (June 3, 2022) and the Landlord (May 31, 2022). The Tenant provided a copy in their evidence, being the copy they retained, not signed by them. The Tenant in the hearing clarified that the Landlord presented two Landlord-signed copies of the agreement to them during the discussions about re-visiting the existing agreement. The Tenant signed one copy – agreeing to another fixed-term tenancy as opposed to the ongoing month-to-month arrangement – and returned that to the Landlord; however, they did not receive a copy of the signed copy returned from the Landlord. As set out in the Tenant's written submission: "The contract is not valid because each of our copies were not signed by each party."

The Landlord in the hearing related their recollection about having a discussion with the Tenant about the need to exclude utilities from the rent amount, due to increasing costs and mortgage burdens. The Landlord recalled showing the Tenant a copy of the utilities' invoice as a sample. They recalled the Tenant agreed to pay half the utilities' amounts in question. They left a copy of the tenancy agreement for the Tenant to review, and then the Tenant returned a copy of the signed agreement to the Landlord. For the Landlord, the agreement is clear that utilities are not included in the rent amount, and the Tenant was well aware of this change before signing a copy of the agreement and returning it to the Landlord.

The Tenant in their written submission set out that the discussion of utilities came only *after* they signed the 2022 tenancy agreement, thus:

Under duress, I verbally agreed to pay half of the utilities from July 2022 going forward. There was no written and signed contract agreeing to this.

The Tenant presented a copy of the Landlord's text message that proposed the amount of \$49.63 per month. The Tenant responded: "I will write you checks [*sic*]." The Landlord provided a copy of this same text message (dated August 18, 2022) to present that this shows the Tenant's good faith in agreeing to this.

On the Tenant's Application in this present hearing, they claimed for a return of the utilities' amounts they paid to the Landlord within the timeframe of August 2022 through to the end of the tenancy. To cover these utilities' amounts, the Tenant provided a series of post-dated cheques specific to this issue: \$49.63 over a series of 13 cheques, as well as 4 post-dated cheques for \$105.17 each. The Tenant's claim in total is \$1,065.87.

In the hearing, the Landlord maintained that they should not have to repay these amounts to the Tenant that were made by the Tenant based on the agreement in place. In their evidence, the Landlord presented materials related to their mortgage as justification for their need to have the Tenant pay utilities' costs.

The Landlord provided a written response with the following points:

- they met with the Tenant on May 31 to review the agreement, specifically to address the Landlord's inability to cover utilities' costs – they provided the Tenant with a copy of the 2022 city utility bill
- the Tenant proposed covering half of these costs, and the Landlord agreed
- they left copies of the Landlord-signed tenancy agreement
- there was no duress: the Landlord clearly communicated their needs in regard to utilities' costs; they accommodated the Tenant's request for half of the amounts; the Tenant had "ample time to think it over, as [the Tenant] requests, with no deadline imposed on [them]"; the Tenant returned a signed agreement to the Landlord on June 2.
- the agreement itself does not specify one-half of utilities; however, the Landlord honored their word and agreed to one-half of the utilities' amounts
- the Landlord confirmed this via text message to the Tenant on August 18.

In a further written response, the Landlord described their concessions to the Tenant over the course of the total tenancy, such as not imposing maximum rent increases, not pursuing costs for damage in the rental unit, and the Landlord's own financial difficulties.

c. Is the Landlord eligible for recovery of the Application filing fee?

The Landlord paid the Application filing fee amount of \$100 on November 8, 2024.

d. Is the Tenant eligible for recovery of the Application filing fee?

The Tenant paid the Application filing fee amount of \$100 on January 3, 2025.

Analysis

In general, a party that makes an application for compensation against the other party has the burden to prove their claim. This burden of proof is based on a balance of probabilities. An award for compensation is provided for in s. 7 and s. 67 of the *Act*.

To be successful in a claim for compensation, an applicant has the burden to provide sufficient evidence to establish the following four points:

- that a damage or loss exists;
- that a damage/loss results from a violation of the *Act* and/or tenancy agreement;
- the value of the damage or loss; and
- steps taken, if any, to mitigate the damage/loss.

a. *Is the Landlord entitled to compensation for unpaid rent?*

The *Act* s. 26 sets the positive obligation for payment of rent with a tenant:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the *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.

I find the parties agreed that the Tenant moved out on July 15, 2024, with the tenancy end-date at July 31, 2024.

I find the record shows the Landlord identified the March 2023 rent and utilities issue prior to the tenancy-end date. This directly concerned their ability to return the security deposit to the Tenant. The Tenant on their own filed a request to the Residential Tenancy Branch – not disclosing the matter of March 2023 rent which the Landlord had inquired about and attempted to rectify – thereby receiving a granted doubling of the deposit amounts as compensation. The Landlord had no opportunity in that proceeding to raise the issue of unpaid March 2023 rent.

I accept this was an error on the part of the Landlord at the time. The Landlord did not detect this error; however, I find they attempted to rectify this before the tenancy ended, and the Tenant was not responding to communication from the Landlord. A prior adjudicator identified the Landlord's end-date for dealing with the deposit as August 18.

The Landlord did not have a response from the Tenant in place by that time, and the Tenant was, as per application of the *Act*, compensated double of the deposits for this reason.

I find it reasonable that the Landlord attempted to rectify this error prior to the end of the tenancy. I find the Landlord credible on their point that they were blocked from depositing the original cheque due to the time that had passed; however, this does not negate the Tenant's obligation to ensure the rent was paid – i.e., the positive obligation that is set in s. 26 of the *Act*. This is a reciprocal arrangement – I find it reasonable that the Landlord was attempting to deal with this via the deposit in a timely manner, yet the Tenant did not respond, as shown in the Landlord's evidence.

I find it a simple matter of reciprocity and fairness with respect to the parties' rights and obligations. In this situation, the Tenant was obligated to pay rent and the agreed-to utilities' amount; the Landlord, as per s. 26, had the right to payment of rent for the provision of accommodation. There was no agreement in place that the month of March 2023 would be effectively rent free. I find the Tenant had no other right to effectively deduct all of the March 2023 rent. As per the agreement and the *Act*, the Tenant was obligated to pay rent for that accommodation that was available to them for that time. I find this obligation outweighs any error on the part of the Landlord which does not equate to a violation of the *Act* or a breach of the tenancy agreement by the Landlord. I concede the Landlord attempted to rectify this in a timely manner prior to the tenancy ending, and certainly by asking for a review consideration of the prior compensation granted to the Tenant for the return of the deposits.

I disagree with the Tenant's assertion that the Landlord intended to withhold the deposit: the evidence plainly shows the Landlord's queries and attempts to deal with the situation were not met with responses or acknowledgement from the Tenant.

On the Application, the Landlord added the sum of \$2,980 (rent amount) and \$49.63 (utilities) for their \$2,939.63 claim for compensation. On my review, these added amounts total \$3,029.63.

I grant \$3,029.63 in compensation to the Landlord for the full amount of March 2023 rent and utilities. The Tenant's obligation to pay rent was not negated by the passing of time in this tenancy, and the Landlord certainly gave no indication that they waived that March 2023 rent amount.

b. Is the Tenant entitled to compensation for monetary loss/other money owed?

In this claim for compensation from the Tenant, they bear the burden of proof to show that it was the Landlord who failed to comply with the *Act*/tenancy agreement, and suffered some loss because of the Landlord's breach. Also, as above, the Tenant must show the value of their loss, and that they acted reasonably to minimize that loss.

I find the tenancy agreement that appears in the evidence is legal and binding, bearing both the signature of the Landlord and that of the Tenant. I dismiss the Tenant's notion that the agreement itself is not valid or binding because *both* their copy and that of the Landlord do not bear both parties' signatures. The Tenant did not submit that they *had never* signed a tenancy agreement; therefore, I find they were fully aware of the terms therein; these terms encapsulated their rights and obligations during this tenancy.

The Tenant presented that they agreed to reimburse the Landlord for utilities' amounts; however, they did so under duress. I find this is not plausible. I find the Landlord more credible on their recollection, with abundant detail, about the process of bringing the matter of utilities to the Tenant's attention, then conceding to the Tenant's offer to pay one-half of the utilities' amounts. I find this was a gesture of good faith on the part of the Landlord going forward. Also, when in fact the actual amounts in question are one-half of the utilities' amounts, this lends credence to the Landlord's account that this was the offer to them from the Tenant, and it was the Landlord who accepted this going forward.

I find the Landlord accepting payments from the Tenant for one-half of the utilities' amounts from August 2022 onwards does not constitute a violation of the tenancy agreement or the *Act*. I find there was no element to the Tenant's notion that they were under duress when agreeing to this, with no evidence the Landlord was discussing an end to the tenancy, or demanding to increase rent beyond the legal amount, or making other demands. I find the Landlord's evidence and testimony shows that they were focused on making the situation work to the Tenant's advantage, and compromised on utilities. I find there was no element of pressure in place for the Tenant to agree to this.

As well, I conclude the Tenant did not raise this as an issue at any time during the tenancy. I find the Tenant raised this only in response to the Landlord's recent Application, and well past the tenancy end-date of July 15, 2024. This late-stage application undermines the Tenant's submission that this was a situation where they agreed to something they felt was incorrect. Simply stated, I find the Tenant agreed to pay for utilities and cannot now backtrack on that agreement.

For these reasons, I dismiss the Tenant's Application in its entirety, without leave to reapply. I grant no compensation to the Tenant for past utilities' amounts they paid to the Landlord.

c. Is the Landlord eligible for recovery of the Application filing fee?

I find the Landlord was successful in this Application, and it was necessary for them to bring this Application to resolve the matter. I grant the full amount of the \$100 Application filing fee to them.

d. Is the Tenant eligible for recovery of the Application filing fee?

The Tenant was not successful in their Application; therefore, I grant no return of the Application filing fee to them.

Conclusion

As above, I grant recovery of one-month's rent equivalent, and utilities, to the Landlord, for \$3,029.63.

I grant to the Landlord \$100 for recovery of the Application filing fee.

I dismiss the Tenant's claim for compensation, and the filing fee, without leave to reapply.

I grant to the Landlord a Monetary Order in the amount of **\$3,129.63** under the following terms:

Monetary Issue	Granted Amount
compensation for unpaid rent and utilities	\$3,029.63
Application filing fee	\$100.00

I provide the Landlord with this Monetary Order in the above terms and the Landlord must serve it to the Tenant as soon as possible. Should the Tenant fail to comply with this Monetary Order, the Landlord may file this Monetary Order in the Small Claims Division of the Provincial Court where it will be enforced as an Order of that Court.

I make this decision on the authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: February 13, 2025

Residential Tenancy Branch