



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNRL, FFL

### Introduction

The landlord applied for compensation (for unpaid rent and unpaid utilities) pursuant to section 67 of the *Residential Tenancy Act* ("Act") and he also applied to recover the application for dispute resolution filing fee pursuant to section 72 of the Act.

On September 28, 2020 the landlord applied for dispute resolution, and on January 21, 2021 he attended the dispute resolution hearing. The tenant did not attend.

The landlord gave sworn evidence that he mailed, by way of Canada Post registered mail, a copy of the Notice of Dispute Resolution Proceeding package on October 9, 2020. The package was not claimed by the recipient tenant and the package was returned. A copy of the registered mail tracking information, along with a receipt and a photograph of the returned mail was submitted into evidence. The address on the mail is that which the tenant provided to the landlord as her forwarding address.

Based on the undisputed oral and documentary evidence of the landlord, I find that the tenant was served the Notice of Dispute Resolution Proceeding and evidence in compliance with section 89(1)(c) of the Act and the *Rules of Procedure*. Failure to pick-up one's mail does not nullify the service of a legal document under the Act.

### Issues

1. Is the landlord entitled to compensation?
2. Is the landlord entitled to recover the application filing fee?

### Background and Evidence

I have only reviewed and considered oral and documentary evidence meeting the requirements of the *Rules of Procedure* and which was relevant to determining the issues. Only relevant evidence needed to explain my decision is reproduced below.

The tenancy began June 1, 2019 and ended June 13, 2020. Monthly rent was \$2,025.00, due on the first of the month. The tenant paid a security deposit of \$1,012.50 which the landlord was authorized to retain for partial rent. The tenancy was a fixed term tenancy that was supposed to end on May 31, 2021.

In this application the landlord seeks compensation for, as described in his application:

Tenant gave notice on May 25th, 2020 that she would vacate the property by June 30th 2020. She instead vacated by June 13th, 2020. New tenant was found on July 1st, 2020. Property was empty from June 13th, 2020 to June 30th, 2020.

[. . .] I am looking for compensation for the following:

- 1) rent from June 15th to June 30th 2020 (\$1,012.50)
- 2) missed payment for prior rent (\$125.00)
- 3) unpaid utilities (\$734.00)
- 4) application filing fee (\$100.00)

Submitted into evidence was a copy of a Landlord's Application for Dispute Resolution Past Tenancy (#RTB-12L-PT), a copy of the written Residential Tenancy Agreement, an Addendum to the Residential Tenancy Agreement, a copy of a municipal water and sewer bill (I note that water and sewer are not included in the rent, as indicated on the tenancy agreement), a copy of a written notice dated May 25, 2020 from the tenant in which she informs the landlord that she would be vacating the rental unit on June 30, 2020, and, an email dated June 8, 2020 in which the tenant authorized the landlord to keep the security deposit towards rent.

Additional emails, in which the landlord attempts to arrange for a walkout inspection, tries to find out when he can get the keys returned, attempts to find out whether the tenant has moved out or not, and whether he will receive the rest of the rent for June, are submitted into evidence. The tenant appeared to find these requests unreasonable, responding in an email of June 12, 2020 that "You actually really stress me out. I am sure my dad will have no problem dealing with you on my behalf." Not surprisingly, the landlord commented during the hearing that being a landlord, "it's a headache."

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 7 of the Act states that if a party does not comply with the Act, the regulations or a tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Further, a party claiming compensation for damage or loss that results from the other's non-compliance must do whatever is reasonable to minimize the damage or loss.

### **Claim for Unpaid Rent and Utilities**

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, including the payment of any utilities that are not included in the rent. In this dispute, the tenant missed paying rent in the amount of \$125.00 from a previous rent amount that was due. The tenant failed to pay for the water and sewer utilities in the amount of \$734.00. The tenant failed to pay the rent in the amount of \$1,012.50 for the last two weeks of the tenancy, which, notwithstanding that it was a fixed term tenancy ending May 31, 2021, she ended effective June 30, 2020. Ending a fixed term tenancy before it has come to an end is a breach of section 45(2) of the Act.

The total amounts owing have been proven by the landlord by way of oral and documentary evidence. The total amount is \$1,871.50. In respect of the landlord's doing whatever was reasonable to minimize the loss, he repeatedly asked the tenant to pay the rent owing, was assured by the tenant that she would pay the outstanding utilities (which she did not) and attempted to find a new tenant as soon as possible. I find that the landlord did what was reasonable to minimize his loss.

Taking into consideration all of the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving his claim for compensation in the amount of \$1,871.50.

### **Claim for Recovery of Application Filing Fee**

Section 72(1) of the Act permits an arbitrator to order payment of a fee under section 59(2)(c) by one party in a dispute to another party. A successful party is generally entitled to recovery of the filing fee. As the landlord was successful, I grant his claim for reimbursement of the filing fee of \$100.00.

This amount is added to the above-noted award of \$1,871.50 for a total of \$1,971.50.

Conclusion

**I hereby grant the landlord's application.**

The landlord is granted a monetary order in the amount of \$1,971.50, which must be served on the tenant. If the tenant fails to pay the landlord the amount owed within 15 days of being served the order, the landlord may file and enforce the order in the Provincial Court of British Columbia (Small Claims Court).

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: January 21, 2021

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Residential Tenancy Branch