



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MNDC, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application for a Monetary Order for damage or loss under the Act, regulations or tenancy agreement, unpaid rent or utilities, to retain the tenant's security deposit and recover the filing fee paid for this application. Both parties appeared at the hearing and had an opportunity to be heard and respond to the other party's submissions.

Issue(s) to be Decided

1. Whether the landlord has established an entitlement to compensation under the Act, regulations or tenancy agreement, and if so, the amount.
2. Whether the landlord has established an entitlement to unpaid rent and utilities and if so, the amount.
3. Retention of the security deposit.
4. Award of the filing fee.

Background and Evidence

Upon hearing undisputed testimony of the parties, I make the following findings. The tenancy commenced in November 2006. The tenant vacated the rental unit October 31, 2008 without notice to the landlord. The tenant was required to pay rent in the amount of \$775.00 every month and had paid a security deposit of \$375.00 on September 27, 2006. In addition to paying rent, the tenant was responsible for 40% of the gas and electricity bills, payable to the tenants living in the upper unit.

In making this application, the landlord is seeking to recover from the tenant:

Loss of rent for November 2008	\$ 775.00
Carpet cleaning	78.75
Advertising	42.92
Cleaning	125.00
October utilities	119.85
November utilities	83.83
Registered mail for this application	8.40
Filing fee for this application	<u>50.00</u>
Total claim	\$ 1,283.75

The landlord testified that she had no notice that the tenant was going to move out and was able to re-rent the unit for December 1, 2008. The landlord testified that she paid the upper unit tenant \$119.85 and \$96.02 for October and November utilities and wants to recover those costs from the tenant. The landlord submitted as evidence a letter signed by the upstairs tenant who wrote that the tenant is responsible for 40% of the gas and hydro bills and that by leaving unannounced the tenant "left without paying the full amount for October and November". The landlord provided invoices to substantiate the cost of the utilities as well as the amounts paid for carpet cleaning and a cleaning lady.

The tenant testified that he and the landlord had verbally agreed that he would pay the landlord one-half month's rent for November and that the landlord could also keep the security deposit for any damages. The landlord denied that they had reached such an agreement.

The tenant does not dispute that additional cleaning may have been required and agrees to pay for the carpet cleaning and general cleaning.

With respect to the utilities, the tenant testified that he had given the upper tenant \$60.00 on November 2, 2008 in settlement of \$72.04 for the hydro bill and that as far as he knew he had satisfied his obligation for utilities with the upper unit tenant. The tenant does not agree with having to pay for a portion of utilities for the month of November 2008 since he was not living in the unit during that time.

Analysis

Where verbal terms are clear and in situations where both the landlord and tenant agree, there is no reason why such terms can be enforced. Obviously, by their nature, verbal terms are virtually impossible for a third party to interpret in order to resolve disputes as they arise. Therefore, since the parties are in dispute as to there being a settlement to pay one-half a month's rent for November and surrender the security deposit, I have no choice but to base deliberations on provisions contained in the *Residential Tenancy Act* by default and not on the purported verbal agreement.

Where a tenant wishes to end a month-to-month tenancy, the Act requires the tenant to give the landlord at least one full month of notice in writing. The tenant did not provide such notice to the landlord in this case. As a result, the landlord incurred a loss of rent for the month of November. I hold the tenant responsible for compensating the landlord for this loss since it could have been avoided or mitigated had the tenant given notice as required by the law. The landlord is awarded \$775.00 for loss of rent.

As the tenant agreed to pay for carpet cleaning and general cleaning costs, I grant the landlord's request to recover cleaning costs of \$78.75 and \$125.00.

I do not award the landlord for advertising costs. Advertising is a normal cost of doing business for a landlord and since the tenancy was on a month-to-month basis, the landlord must have expected that at some point the tenancy would end and she would have to advertise to find new tenants. I also do not award the landlord for the registered mail costs for this application as the Act does not provide for recovery of costs for the dispute resolution process with the exception of the filing fee.

With respect to the October utility bills I hold the tenant partially responsible for the hydro and gas billings issued on October 28, 2008. The landlord provided invoices for these billings that show the tenant's portion to be \$72.04 and \$47.81 respectively. The tenant testified that he had paid \$60.00 to the upper tenant for hydro and upon my review of the letter from the upstairs tenant, I find that it is not sufficiently clear whether the upstairs tenant received \$60.00 from the tenant. More specifically, the upstairs tenant says the tenant did not pay the "full amount" for utilities. That leaves me wondering whether that means the tenant paid a partial amount, as the tenant testified during the hearing. As I heard the tenant say he paid \$60.00 towards hydro then obviously \$12.04 was unpaid for October hydro and since there was no mention of paying the gas bill, I find the tenant responsible for \$47.81 the gas bill.

I disagree with the landlord that the tenant is responsible for the utilities incurred in the month of November 2008. Although the tenant has been found responsible for the landlord's loss of rent for the month of November 2008, the tenancy ended October 31, 2008 when the tenant vacated and I cannot find justification in charging the tenant for utilities he did not use. Therefore, the landlord's claims for November 2008 utility costs are denied.

As the landlord was largely successful with this application, I award the filing fee to the landlord. The landlord is also authorized to retain the tenant's security deposit and

accrued interest in partial satisfaction of the amounts owed to the landlord. I enclose for the landlord a Monetary Order calculated as follows:

Loss of rent – November 2008	\$ 775.00
Carpet cleaning	78.75
General cleaning	125.00
October hydro	12.04
October gas	47.81
Filing fee	<u>50.00</u>
Sub-total	\$ 1,088.60
Less: security deposit and interest	<u>(386.86)</u>
Monetary Order	<u>\$ 701.74</u>

The landlord must serve the Monetary Order upon the tenant and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The landlord is authorized to retain the tenant's security deposit and accrued interest.

The landlord is also provided with a Monetary Order in the amount of \$701.74.

February 12, 2009

Date of Decision

Dispute Resolution Officer