



Dispute Resolution Services

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

Decision

Dispute Codes: MNR, FF

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid utilities as well as to recover the filing fee for this proceeding.

This matter was originally scheduled to be heard on January 15, 2009, however it was adjourned so that the Landlord could provide the Tenants with a statement of account showing not only the amount of utilities billed but also the payments he received from the Tenants in payment of the utilities.

Issue(s) to be Decided

1. Are there arrears of utilities and if so, how much?

Background and Evidence

This month to month tenancy started on April 2, 2005 and ended on October 31, 2008 when the Tenants moved out. Rent was \$988.00 per month plus utilities. The Tenants paid a security deposit of \$475.00 on April 4, 2005.

The Landlord claimed that the water bill was initially in the Tenants' names, however they failed to pay the account and the arrears were applied to the owner's property tax account (but later paid by the Tenants). As a result, sometime after April, 2006, the water bill was put in the Landlord's name. In a Notice to End Tenancy for unpaid utilities dated October 15, 2008, the Landlord claimed the amount of the unpaid water bill was \$931.67. In his application dated November 27, 2008, the Landlord claimed the amount of the unpaid water bill was \$1,807.97. In a spreadsheet submitted into evidence at the hearing, the Landlord claimed the outstanding water bill was \$2,249.84.

The Landlord said according to his file, the Tenants made only 2 payments on the water account in a 3 year period, the last one being on May 11, 2007. The Landlord claimed he was unaware that the Tenants had not paid the water account for a year and a half because he did not take care of billing and receiving payments. The Landlord said those duties were looked after by the accountants and bookkeepers of Royal LePage.

The Landlord claimed there had been a number of persons filling those duties over the past 3 years and they had not brought it to his attention.

The Tenants do not dispute that they are responsible under their tenancy agreement for paying the water bill or that there is an outstanding balance. The Tenants claimed they thought they would be responsible for paying annually the water usage in excess of a basic allowable amount and believed their security deposit would cover any arrears of utilities owing at the end of the tenancy. The Tenants argue however, that the amount claimed to be in arrears by the Landlord is unreasonable and that his records are not reliable.

The Tenants claimed there were other times during the tenancy when the Landlord alleged they were in arrears but later admitted to having misplaced their payment. The Tenants said they could not obtain records as far back as the Landlord claimed. In any event, the Tenants argued that if they had not paid utilities for the extended period the Landlord claimed, the Landlord would have been after them for payment given that whenever they were late on their rent, the Landlord would instantly pursue them for it. The Tenants also argued that the Landlord did not allege they had utility arrears until they advised the Landlord in October, 2008 that they would be ending the tenancy due to mould in the rental unit.

Analysis

In this case, the onus is on the Landlord to show that there are arrears of utilities owed as alleged. The Landlord submitted copies of utility bills as well as letters to the Tenants requesting payment of each individual bill. It was not until October 15, 2008, that the Landlord claimed the Tenants had not paid those bills and had utility arrears.

I find that the Landlord's evidence with respect to the recording of payments is unreliable. The Landlord claimed he had no personal knowledge or involvement in the billing and receipt of payments on the utilities but later admitted that he found something in his file to remind him that the Tenants were to be credited \$300.00 for the utilities in 2006 but noted he had not prepared them a receipt. The Landlord claimed that the spreadsheet he submitted was recently prepared by his assistant. I note that there are calculation errors in the spreadsheet in that it shows the balance owing to be \$1,974.07 when in fact it adds up to \$2,249.84. I also note the spread sheet includes the period, January to October 2006. The Landlord could not explain why that period was omitted in his previous accounting.

I find on a balance of probabilities that there are arrears of utilities owing, however, I find that the Landlord's record of payments is unreliable. The amount set out on the Notice to End Tenancy for Unpaid Utilities dated October 15, 2008 alleges an amount of arrears (\$931.67) that is very close to the total amount of the utility bills for the period

November 2007 to October, 2008 (\$959.58). Consequently, I find that the amount stated on the Notice to End Tenancy is the most reliable evidence of arrears and coincides most closely with the Tenants' admissions of what they believed might be owing. As a result, I find that the Landlord is entitled to recover \$931.67 in unpaid utilities and is also entitled to recover the \$50.00 filing fee for this proceeding.

Conclusion

A Monetary Order in the amount of **\$981.67** has been issued to the Landlord and a copy of it must be served on the Tenants. If the amount is not paid by the Tenants, the Order may be enforced in the Provincial (Small Claims) Court of British Columbia and enforced as an order of that court.