

Dispute Codes: MND, MNR, MNDC, MNSD, FF

Introduction

I have been delegated the authority under Section 9.1 of the *Residential Tenancy Act* (the “Act”) to hear this matter and decide the issues.

This is the Landlords’ application for a Monetary Order for damages to the rental unit and unpaid utilities; and to recover the filing fee from the Tenants for the cost of filing the application.

I reviewed the evidence provided prior to the Hearing. The parties gave affirmed evidence and the Hearing proceeded on its merits.

Issues to be Decided

- Are the Landlords entitled to a monetary order for unpaid utilities and damages?
- Are the Landlords entitled to recover the cost of the filing fee from the Tenants?

Background and Evidence

The Landlords gave the following testimony:

- The Tenants lived in the rental unit for approximately 30 months. There was a written tenancy agreement, which the Landlords entered into evidence. Under the tenancy agreement, the Tenants were responsible to pay utilities. The utilities were under the Landlords’ names.
- Initially, for the first 12 months of the tenancy, the Tenants paid the Landlords a flat rate of \$143.00 per month for utilities, based on a monthly equal payment plan. At the end of the first 12 month period, the Landlords reduced the amount payable by the Tenants to \$120.00 per month. The Landlord did not supply, and the Tenants did not request, copies of the actual bills from the electric and gas companies.
- At the end of the tenancy, the Landlords completed a final reconciliation of the cost of utilities over the term of the tenancy. They discovered that the Tenants had not been paying enough to cover the costs of utilities, and met with the Tenants to attempt to resolve the issue.

- The Tenants declined to pay any more money towards utilities, and therefore the Landlords filed an Application for Dispute Resolution.
- The Landlords have claimed for unpaid utilities over the term of the tenancy, as follows:

Actual utility costs	\$6,575.32
Amount the Tenants paid to the Landlord	\$3,876.00
TOTAL SHORTFALL	\$2,699.32

- The Tenants over-filled the soaker tub in the rental unit, resulting in water damage to the basement ceiling below the tub. The Landlords estimate the damages to be \$350.00 and have claimed for a monetary order in that amount against the Tenants. The Landlords have not yet repaired the ceiling.
- At the beginning of the tenancy, the Tenants were provided with an automatic garage door opener. The garage door opener was missing from the rental unit when the Tenants moved out. The Landlords have claimed \$20.00 for the cost of replacing the garage door opener. The garage door opener was approximately 15 years old.
- The Landlords returned the Tenants' pet deposit to the Tenants when they moved out of the rental unit, but kept the security deposit.

The Tenants gave the following testimony:

- The Landlord did not make the Tenants aware of any shortfall with respect to utilities until two weeks before the Tenants moved out of the rental unit.
- If the Landlords had notified the Tenants of the shortfall earlier, the Tenants would have been happy to make an adjustment to the monthly amount they paid to the Landlord for utilities.
- The Tenants had an agreement with the Landlord to pay a set amount per month for utilities, and they lived up to that agreement.
- The Tenants want the security deposit, which they paid on August 30, 2006, returned to them.
- The Tenants agreed that they misplaced the garage door opener, but dispute that they are responsible for the soaker tub overflowing, because the plumbing was faulty.

Analysis

The parties had an agreement, to which they both attest, that the Tenants would pay the Landlords a fixed amount per month for the cost of utilities. The Tenants paid the agreed-upon amount for the term of the tenancy. The Landlords did not realize their error in calculations until very shortly before the Tenants vacated the rental unit. With respect to the Landlord's claim for unpaid utilities, I find that the Landlords are estopped from making a claim for the shortfall period prior to the month of March, 2009, when the Landlord first advised the Tenants of the shortfall. The Landlords provided statements from the gas company and BC Hydro, indicating that the approximate cost for utilities for the month of March, as follows:

BC HYDRO (Feb 18 – Mar 19 = \$148.23) divided by two for approximate usage from Mar 1 – Mar 19/09	\$74.12
BC HYDRO estimate for Mar 19 – Mar 31/09	\$109.00
Teresen Gas (Feb 17 – Mar 18 = \$109.48) divided by two for approximate usage from Mar 1 – Mar 18)	\$54.74
Teresen Gas estimate for Mar 18 – Mar 31)	\$9.49
Less amount the Tenants paid to the Landlord for utilities in March	<u>-\$120.00</u>
TOTAL SHORTFALL	\$127.35

I allow the Landlords' claim for unpaid utilities in the amount of \$127.35.

I dismiss the Landlords' claim for damages with respect to repairing the ceiling, as the repairs have not been completed and no documentary evidence was provided by the Landlords with respect to this claim. I have therefore not considered the merits of their application for damages against the Tenants arising from the overflowing soaker tub, and grant the Landlords leave to re-apply with respect to this portion of their claim.

The Tenants agreed that they misplaced the garage door opener. The Landlords testified that the garage door opener was approximately 15 years old. Therefore the useful life of the device was imminently at an end, and I award the Landlords the amount of \$5.00 for this portion of their claim.

The Landlords have been partially successful in their claim and are entitled to recover the cost of the filing fee from the Tenants.

The Landlords have established a monetary claim, as follows:

Shortfall in utility payments	\$127.35
Damages for missing garage door opener	\$5.00
Recovery of filing fee	\$50.00
TOTAL MONETARY CLAIM FOR THE LANDLORDS	\$182.35

The Landlords are holding the Tenant's security deposit in the amount of \$750.00. Interest has accrued on the security deposit in the amount of \$24.00, for a total of \$774.00.

After set off of the Landlords' monetary claim, I find that the Tenants are entitled to a monetary order against the Landlord in the amount of \$591.65.

Conclusion

The Landlord's application for a monetary order of damages arising from the water damage to ceiling is dismissed with leave to re-apply.

Pursuant to Sections 67 and 72 of the Act, I HEREBY ISSUE a monetary order in favor of the Tenants in the amount of \$591.65. The monetary order must be served on the Landlords and may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an order of that Court.

Dated: July 22, 2009.
