



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNR FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for unpaid utilities and to recover the cost of the filing fee from the Tenants for this application.

Service of the hearing documents, by the Landlord to the Tenants, was done in accordance with section 89 of the *Act*, sent via registered mail on June 29, 2010. The Tenant confirmed receipt of a copy of the Landlord's application and the Notice of Hearing letter.

The Landlord and Tenant appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issues(s) to be Decided

1. Has the Landlord proven entitlement to a monetary order for unpaid utilities?
2. Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

At the onset of the hearing the Tenant stated that he did not receive evidence from the Landlord. He confirmed receipt of a copy of the Landlord's application for dispute resolution and a copy of the Notice of Hearing letter and advised that he did not receive

copies of any utility bills or a copy of the typed written statement which the Landlord provided to the Residential Tenancy Branch as evidence.

The Landlord stated that he sent copies of his application package and evidence in the same envelope to the Tenants. The Landlord is seeking compensation in the amount of \$383.28, a higher amount than what is listed on his application, which is comprised of the follows:

\$157.84 for natural gas from December 14 2009 to January 14, 2010

\$ 81.04 for hydro from November 14, 2009 to January 14, 2010

\$115.00 for natural gas for sixteen days between January 14 to January 31, 2010

\$20.00 for an estimated amount towards 15 days of hydro January 15 – 31, 2010

The Landlord claims that these were the final utility bills for the rental unit and that the Tenant instructed the Landlord to deduct these amounts off of his security deposit because the Tenants had given the Landlord notice to end the tenancy and they were moving at the end of January 2010. He argued that whenever the utility bills would arrive that he would provide the Tenants with a copy and they would pay him 1/3 of the bill as per their written tenancy agreement. The Landlord argued that later in the tenancy the Tenant's mother in-law moved into the unit, without permission, and that they verbally agreed that the Tenants would begin to pay ½ of the utilities. That is why the Landlord is seeking ½ of the utility costs today. I asked the Landlord to refer to his receipts so he could answer specific questions about payments received by the Tenants, to which the Landlord responded that he did not have receipts. He stated that he issued receipts to the Tenants for their rent payments but they were not duplicate receipts. He confirmed that he never issued receipts for payments towards utilities and asked why he would need to keep copies of receipts. He stated that he completed his income tax by knowing how long the tenancy had been in effect for and he would simply count the months and add up the monthly rent.

The Tenant testified that they did not owe anything towards utilities at the end of the tenancy. He confirmed that their written tenancy agreement provided that they pay 1/3 of the utility costs and that while he was out of town his mother in-law came to stay with his wife. He did not enter into an agreement with the Landlord to pay 1/2 of the utilities, rather the Landlord demanded this of his wife while he was out of the country so he told his wife to go ahead and pay 1/2 until he returns as he did not want his wife to have to deal with the Landlord in his absence. They would pay their rent and utility payments on the first of each month and would often write on the back of the rent receipt the amount they paid towards utilities. He stated that his receipts were written by the Landlord on a standard carbon copy receipt therefore there should be a second copy of the receipt. He confirmed that on November 1, 2009 he paid his rent and \$53.00 towards natural gas, on December 1, 2009 in his absence his wife paid half of the utilities in the amount of \$149.00 (1/2 of \$140.09 hydro and 1/2 of \$157.64), and on January 1, 2010 they paid their rent and \$134.41 natural gas. He argued that on January 30, 2010 when they moved out of the unit the Landlord demanded that they pay a prorated amount towards hydro and natural gas in the amount just over one hundred dollars.

After the Tenant provided his testimony the Landlord became upset and stated that he could provide all the required copies of receipts to the Tenancy Branch. The Landlord went on to say that he just found his receipts and stated that he would apply for another application and serve all the documents so he could get compensation. I explained to the Landlord that I had not made my decision as of yet and that I would consider his testimony about the amounts being claimed. He then stated that the Tenant verbally agreed to pay 1/2 of the utilities and why would he not want his security deposit returned at the end of the tenancy if he was not asking the Landlord to put it towards the utility bills.

The Tenant responded by stating he did not accept the return of the security deposit on the last day because he did not want to accept a cheque.

Analysis

The Landlord initially stated that he sent the Tenant a copy of his evidence and then later in the hearing he stated that he was going to reapply and send all of his evidence to the Tenant so he could get compensation. Based on the Landlord's contradicting testimony I put more weight on the Tenant's testimony that he did not receive copies of the evidence. The applicant not providing the respondent copies of their evidence is a contravention of section 3.1 of the *Residential Tenancy Branch Rules of Procedure*. Considering evidence that has not been served on the other party would create prejudice and constitute a breach of the principles of natural justice. Therefore as the respondent Tenant has not received copies of the Landlord's evidence I find that the Landlord's evidence cannot be considered in my decision. I did however consider the Landlord's testimony.

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation, in this case the Landlord has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

I heard undisputed testimony that the parties entered into a written tenancy agreement which provided the Tenants were responsible for paying 1/3 of the utility costs. A written agreement cannot be changed by a verbal agreement therefore I do not accept the Landlord's claim that the Tenants were required to pay ½ of the utilities based on a verbal agreement.

The Landlord first applied for \$363.43 in unpaid utilities then testified that the amount had changed to \$383.28 and provided individual amounts which added up to \$373.28 (\$157.84 natural gas + \$81.05 hydro + \$115.00 natural gas + \$20.00). When I first asked the Landlord to refer to his receipts he advised that his receipts were not duplicates and he did not keep copies. Later in the hearing the Landlord stated that he found his receipts. I put more weight on the Tenant's testimony that receipts were issued on the standard duplicate receipt forms and that the Landlord only provided receipts for the rent payments. Then the Tenants would record the utility payments on the back of their rent receipts. I accept the Tenants testimony that on the last day of his testimony the Landlord requested a prorated amount towards the unpaid utilities.

A significant factor in my considerations is the credibility of the Landlord's testimony. I am required to consider the testimony not on the basis of whether it "carried the conviction of the truth", but rather to assess his testimony against its consistency with the probabilities that surround the preponderance of the conditions before me. I find that the landlord contradicted his own testimony during the hearing and in the absence of accurate accounting records the Landlord has provided insufficient evidence to support the Tenants have an outstanding balance for utilities. Based on the aforementioned I hereby dismiss the Landlord's claim without leave to reapply.

As the Landlord has not been successful with his application I decline to award recovery of the filing fee.

Conclusion

I HEREBY DISMISS the Landlord's claim, without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 15, 2010.

Dispute Resolution Officer