



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

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 Tenant, was done in accordance with section 89 of the *Act*, first sent via registered mail and when that was returned it was served personally. The Tenant confirmed receipt of the hearing documents.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Have the Tenants breached the *Residential Tenancy Act*, regulation, or tenancy agreement?
2. If so, has the Landlord met the burden of proof to obtain a Monetary Order as a result of that breach?

Background and Evidence

I heard undisputed testimony that the parties entered into a written fixed term tenancy agreement effective December 15, 2006 which switched to a month to month tenancy after December 14, 2007. Rent was payable on the 15th of each month in the amount of \$1,553.50. The tenancy ended April 14, 2010.

The Landlord testified she is seeking double the amount owed for outstanding utilities in the amount of \$232.94 (2 x \$116.47). She advised that the tenancy agreement states the Tenants are to pay the greater of \$100.00 or 2/3 of the utilities. When asked which

utilities, the Landlord initially responded water, electricity and natural gas; then later clarified it was for hydro and natural gas not water.

The Landlord stated that she would personally reconcile her utility accounts about every 3 to 4 months and then again at the end of each year and it usually worked out even over the course of the year. In 2008 she increased the Tenants' monthly utilities payments from \$100.00 per month to \$123.03 to cover the increased costs as this allowed them to make regular payments as it seemed to even out throughout the year.

The tenancy ended mid April so she reconciled the payments made by the Tenants for January, February, and March, and based on her calculation provided in her evidence; the Tenants owe an additional \$116.47 to cover the cost of utilities for these months. She is seeking double this amount for punitive damages because the Tenants had taken her to arbitration for withholding an amount from their security deposit, based on their verbal agreement, and they were awarded double that amount.

The Tenant testified that they were told the Landlord had her utility accounts on a monthly averaging or prorated billing and that is why they were paying a flat rate per month. Then they received an e-mail when the monthly amount was to increase. It was a surprise to them to hear these were estimated amounts that the Landlord had rounded off and not monthly averages set by the utility companies. They had never been asked to pay more for the four years they resided there, based on a reconciliation of the bills. They never saw copies of the utility bills until they were sent them May 7, 2010, after the tenancy ended. The Landlord had been having work done on the heating system in December 2009 and the thermostat was moved to the basement suite which caused the heat to run continuously as the basement was cooler. This caused the Landlord's bills to increase. They had no control over the moving of the thermostat so they should not be held responsible to pay the increased costs.

The Landlord confirmed the thermostat was moved into the basement to ensure there was no loss of heat during the repairs. She argued that consumption was up for the entire year and not just since December 2010.

Analysis

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 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

Section 6(3) of the Act provides that a term of a tenancy agreement is not enforceable if the term is not expressed in a manner that clearly communicates the rights and obligations under it.

The evidence supports the tenancy agreement provides that the Tenants "will pay the greater amount of \$100 a month or two-thirds (2/3) of all reasonable water, heat, and electric utility charges at the premises." That being said, throughout the course of the four year tenancy the Landlord managed the utilities by collecting a flat rate monthly amount beginning with \$100.00 per month which later changed to \$123.03 per month.

There is no evidence to support that the Landlord provided the Tenants regular reconciliation reports with copies of all utility bills, rather the evidence supports the Landlord simply advised them when the monthly amount would increase. Based on the aforementioned, I find that the Landlord did not manage the collection of utility costs in accordance with the terms of the tenancy agreement. On a balance of probabilities I find that the Landlord only chose to manage the utilities based on a reconciliation process when it was to her best interest because the tenancy was ending and she would have to return the security deposit. The Landlord provided only three months worth of utilities bills and no previous yearly reconciliations, therefore there is insufficient evidence to support her testimony that the utilities would even out throughout the year.

There is no provision in the Act that would allow a Landlord to double an amount owed for utility costs that remain unpaid; nor does the Act provide for a claim of punitive damages.

Based on the aforementioned, I find the Landlord has provided insufficient evidence to support the test for damage or loss, as listed above, and I hereby dismiss her claim, without leave to reapply.

The Landlord has not been successful with her application therefore she must bear the burden of the cost of making this application.

Conclusion

I HEREBY DISMISS the Landlord's application, 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: March 09, 2011.

Residential Tenancy Branch