



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for compensation under the Act and the tenancy agreement, for unpaid rent and utilities, to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Although the Landlord applied for an order of possession the Tenants have vacated the rental unit and therefore, an order of possession is no longer required and I dismiss this portion of the Landlord's claim.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

The Tenants submitted evidence late, and these documents have not been considered pursuant to the rules of procedure. Regardless, the Tenants provided oral testimony about this evidence at the hearing.

All evidence submitted in accordance with the rules of procedure has been considered, however, only evidence relevant to the decision is included here.

Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenants?

Background and Evidence

The parties entered into a written standard term tenancy agreement in May of 2009, with the tenancy beginning on June 1, 2009. The agreement had an initial term of one year, and then converted to a month to month tenancy. The monthly rent was \$1,525.00 and the Tenants paid a security deposit of \$762.50 on June 1, 2009. Although a pet damage deposit was to be paid, the Tenants did not pay the Landlord in

cash for this. According to the Tenants this was paid by work in kind, although the Landlord denies this. Nevertheless, the Landlord is not holding a pet damage deposit.

The parties have been involved in a dispute over payment of the utilities at the rental unit for some time. The utilities were not included in the rent and the Tenants were to pay a portion of the utilities, which was shared amongst two other rental units. At the outset of the tenancy the Tenants were to put the utilities in their name. This was not done at the outset of the tenancy.

The Landlord has three rental units using the same utility consumption meters. The subject rental unit is an upper floor of a house. The other two rental units, occupied by third parties, consist of the basement suite of the house and a detached coach house. According to the testimony of the Landlord the rent paid for the coach house includes utilities, although this portion of the rent is meant to cover about $\frac{1}{4}$ of the costs of the utilities.

The Landlord is claiming for all hydro payments of 2010, and the gas bills, which he alleges the Tenants have not paid.

The Landlord testified that the Tenants were to initially pay $\frac{2}{3}$ of the utilities, with the basement suite paying $\frac{1}{3}$. At some point in time during the tenancy, it appears the Landlord wanted the Tenants to pay 50% of the bills.

The Landlord testified that the Tenants owe him \$1,525.00 in rent for May of 2011. The Landlord claims \$4,875.00 in total for the utilities and rent owed.

In support of his claims the Landlord provided a consumption and payment sheet from the utilities and numerous bank records for a business which is indicated as one of the Landlords on the Tenancy Agreement, but was not named in the Landlord application, and personal bank statements of the Landlord. The Landlord served the Tenants with a Notice to End Tenancy for unpaid rent in May of 2011, as the Tenants did not pay their rent. He testified that the Tenants told him they were not paying the May rent because he had cut off the utilities to the rental unit.

The Tenants agreed they did not pay the May rent because the Landlord cut off the utilities to the rental unit.

The Tenants testified that nothing was written down regarding the utility payments. They testified they believed at certain times during the tenancy the Landlord was attempting to have them pay for arrears of utilities left behind by two previous renters.

The Tenants testified that the parties had agreed at the start of the tenancy that they would pay a fixed amount for utilities to the Landlord and the Landlord would provide them with bills and a reconciliation of amounts received and paid. They testified the Landlord failed to provide them with bills or the reconciliation.

The Tenants testified that there verbal agreements made about utilities, however, the Landlord never provided them with copies of the actual bills.

The Tenants also testified they could not access information about the accounts as these were not in their names. They testified they had received no bills from the Landlord for utilities from 2010.

Analysis

Based on the above, the testimony and evidence, and a balance of probabilities, I find that the Tenants have breached the tenancy agreement and the Act when they failed to pay the Landlord rent when due.

In regard to the Landlord's claims for utility payments, I find there is insufficient evidence from the Landlord to clearly establish what amounts are due and owing.

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations, here the Landlord, has the burden of proving their claim.

Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

The Landlord did not provide a detailed calculation of the amounts paid or amounts that are owed by the Tenants. This detailed calculation is required and this requirement is printed on the Landlord's Application. Furthermore, the Landlord's methods for calculating utilities during the tenancy and during the hearing were uncertain, inconsistent and very difficult to determine.

Therefore, I find that as the Landlord was unable to establish or verify the actual loss claimed for utilities, the claims are void due to uncertainty, and I dismiss these without leave to reapply.

I do find the Landlord has established a claim for one month of rent in the amount of \$1,525.00. The Tenants were required to pay rent under section 26 of the Act, even if the Landlord was in breach of the Act when he cut off the utilities to the rental unit.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I find that the Landlords have established a total monetary claim of **\$1,535.00** comprised of \$1,525.00 for rent and \$10.00 towards the fee paid for this application. I have reduced the amount recovered on the filing fee for the Application, as I find the Landlord was largely unsuccessful in his claims.

I order that the Landlord retain the deposit of **\$762.50** in partial satisfaction of the claim and I grant the Landlords an order under section 67 for the balance due of **\$772.50**.

The decision and order are final and binding on the parties, except as otherwise provided for in the Act.

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: July 18, 2011.

Residential Tenancy Branch