Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR FF
DRI MNSD O FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlords filed seeking a Monetary Order for unpaid utilities, and to recover the cost of the filing fee from the Tenants.

The Tenants filed to dispute an additional rent increase, to obtain a Monetary Order for the return of their security deposit, for other reasons and to recover the cost of the filing fee from the Landlords.

The parties appeared at the teleconference hearing, gave affirmed testimony, confirmed receipt of the applications of dispute and evidence submitted by the other, 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, have the Landlords met the burden of proof to obtain a Monetary Order as a result of that breach?
3. Has a rent increased been implemented that does not meet the requirements of section 43 of the *Residential Tenancy Act*?
4. Have the Landlords breached the *Residential Tenancy Act*, regulation or tenancy agreement?
5. If so, have the Tenants 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 month to month tenancy that began on December 1, 2010. Rent was payable on the first of each month in the amount of $695.00 plus $90.00 per month for the utility of natural gas. The Tenant paid $350.00 in cash towards the security deposit on November 18, 2010 and a few days later the female Landlord gave him $2.50 in change to reduce the amount paid to the security deposit amount of $347.50. The Tenant vacated the property by February 27, 2011 and attended a walk through inspection with the female Landlord on February 28, 2011. No move-out inspection form was completed and both parties confirmed there were no issues pertaining to the condition of the unit at the end of the tenancy.

The Landlords have filed seeking to retain $154.24 from the security deposit for the cost of natural gas usage. They stated that they had a verbal agreement with the Tenants that he would pay $90.00 per month on an equal payment plan and that he would be responsible to pay the adjusted amount when the bill came in. When I asked where in the tenancy agreement it mentioned the Tenants' responsibility to pay an adjustment amount for natural gas the male Landlord responded: "everyone who lives in B.C. knows that there is an adjustment amount once a year when you are on an equal payment plan".

The female Landlord confirmed they had wanted the Tenant to put the natural gas in his name however their previous tenant had not paid the natural gas bill so the gas company stated the bill had to remain in the landlord's name. She testified that the bills are received on a monthly basis and every month she would give the Tenant, in person, a copy of the bill. When he refused to pay the difference between the monthly payment and the usage amount they issued him a 10 Day Notice to End Tenancy for unpaid utilities. The Tenant refused to sign over a portion of his security deposit to cover the cost of the natural gas bill and would not accept a partial refund of his deposit. The Landlords are still holding the full $347.50 security deposit. The Tenant provided them with his forwarding address sometime around March 8, 2011.

The Tenant testified and confirmed that he had misunderstood the application where he selected to dispute an additional rent increase. After I explained that section to him he withdrew his request to dispute an additional rent increase. He has applied for the return of his full security deposit. He states he never entered into a verbal agreement with the Landlords to pay additional natural gas costs. He confirmed the Landlords wanted the natural gas account in his name and that the natural gas company refused to change it out of the Landlords' name. The Landlord had called the natural gas company from his rental unit and confirmed the monthly payments would be $90.00 and

she asked him at that time if he would agree to pay the $90.00 each month. He did agree to the $90.00 per month and that is why it is written on his tenancy agreement and the park rules document and initialled in both places by him. He never agreed to pay anything over and above the $90.00 per month for natural gas.

He confirms he attended the move out walk through with the Landlord however she did not have a move out inspection form with her and did not request that he sign the form. He has never received a copy of this move out inspection form and read a section from the Landlord and Tenant's guide which states that they cannot apply to retain his security deposit if they do not provide him with a copy of the form. He states he provided the Landlords his forwarding address on March 1, 2011 and not March 8, 2011 as stated by the Landlords. The Tenant advised he had no further testimony to present.

The male Landlord stated that the Tenant refused to sign the move out inspection form however he was not in attendance during the inspection. The female Landlord testified that she did not complete the move out form as they verbally agreed there was no damage. Upon questioning the female Landlord she said she asked the Tenant to sign the move out form but he refused. I asked why she would expect a tenant to sign a form that was not fully completed. She then changed her story to say she had made a notation about the kitchen floor. I pointed out the copy I had had nothing marked in the move out section to which she confirmed she did not mark anything on the form.

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

Landlord's Application

The evidence supports the parties entered into a written tenancy agreement that stipulates the Tenants are to pay $695.00 per month for rent plus $90.00 per month for the cost of natural gas. I heard opposing testimony pertaining to weather there was an agreement that the Tenants were to pay additional amounts towards natural gas when the monthly payments were adjusted.

In the case of verbal agreements, I find that where verbal terms are clear and both the Landlord and Tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes as they arise.

A significant factor in my considerations is the credibility of the evidence. I am required to consider the evidence not on the basis of whether the testimony "carried the conviction of the truth", but rather to assess the evidence against its consistency with the probabilities that surround the preponderance of the conditions before me. Based on a balance of probabilities I accept that the parties entered into an agreement that the Tenants would paid natural gas in the amount of $90.00 per month, as supported by the notations on the tenancy agreement and park rules document.

Based on the aforementioned I find there to be insufficient evidence to support the Tenants were responsible for natural gas charges that were over and above the amount agreed to, in the tenancy agreement.

I accept the evidence before me that on January 29, 2011 the Tenants paid $180.00 for the December 2010 and January 2011 natural gas bills. The tenancy ended February 28, 2011. Therefore the Landlords are entitled to **$90.00** to cover the cost of natural gas for the month of February 2011.

The Landlords have been partially successful with their application; therefore I award partial recovery of the filing fee in the amount of **$25.00.**

Tenant's Application

The Tenant has made application for monetary compensation for punitive damages and inconvenience when in December 2010 the kitchen faucets were leaking.

I find there is insufficient evidence to support that the Tenants were inconvenienced in a manner that would warrant monetary compensation. Furthermore, the *Residential Tenancy Act* does not provide for remedies of punitive damages. Therefore I dismiss the Tenant's claim for monetary compensation.

The evidence supports the tenancy ended February 28, 2011. The Tenant provided his forwarding address to the Landlords on either March 1, 2011 or March 8, 2011.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit. In this case the Landlords were required to return the Tenant's security deposit in full or file for dispute resolution no later than either March 16th or March 23, 2011. The Landlords filed their application on March 9, 2011, within the 15 day time limit.

Based on the above, I find that the Landlords have not failed to comply with Section 38(1) of the *Act* and that the Landlords are not subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposit and the landlord must pay the tenant double the security deposit.

Based on the aforementioned I find that the Tenants are entitled to the return of the single amount of security deposit in the amount of **$347.50** plus interest of $0.00.

The Tenants have applied to recover the cost of the filing fee however they were entitled to a fee waiver and did not pay a filing fee; therefore no recovery of the filing fee will be awarded.

Off-Set Monetary Claims – Cross Applications – These claims meet the criteria under section 72(1) of the *Act* to be offset against each other's claims as follows:

Monetary Order in favor of the Tenants	$347.50
LESS: Monetary Order in favor of the Landlords ($90.00 + 25.00)	-115.00
TOTAL OFF-SET AMOUNT DUE TO THE TENANT	**$232.50**

Conclusion

A copy of the Tenants' decision will be accompanied by a Monetary Order for **$232.50**. The order must be served on the respondent Landlords and is enforceable through the Provincial Court as an order of that Court.

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: June 13, 2011.

Residential Tenancy Branch