



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent and utilities, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

The Landlord's application named two parties as Tenants, namely M.B. and P.C. The Landlord claimed that M.B. was the caretaker for P.C. who is mentally disabled, and that only P.C. resided in the rental unit. M.B. claimed that he agreed at all times to be solely financially responsible under the tenancy agreement. I find that as P.C. was not a signatory to the Parties' tenancy agreement, she is not properly named as a party in these proceedings and accordingly the style of cause is amended by removing P.C. as a Tenant.

Issue(s) to be Decided

1. Are there rent and utility arrears and if so, how much?
2. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This month-to-month tenancy started on April 1, 2009 and ended on December 16, 2011 when the Tenant moved out. Rent was \$900.00 per month payable in advance on the 1st day of each month plus ½ of the utilities for the rental property. The Tenant paid a security deposit of \$450.00 at the beginning of the tenancy.

The Tenant said for convenience he provided the Landlord with post-dated cheques for \$1,000.00 each month representing the rent and a flat amount of \$100.00 for utilities. The Tenant said that despite this practice, the Landlord was supposed to reconcile the utility accounts at the end of each year to determine what his actual one-half share of the utilities should be. The Tenant argued that the Landlord never provided him with copies of the utility statements despite his requests and he believes that he has overpaid. The Tenant said it was for this reason that he put a stop payment on his post-dated cheque for December 2011.

The Landlord provided copies of a gas and hydro billing statement with due dates of December 22, 2011 and December 12, 2011 respectively, on which all of the billing information has been removed save the amount required to be paid. The Landlord said she removed the particulars from the statements because she does not trust the Tenant. The Tenant argued that the altered statements were unreliable.

Analysis

I find that rent in the amount of \$900.00 is unpaid for December 2011 and accordingly, I find that the Landlord is entitled to recover that amount. However, I find that there is insufficient evidence to conclude that there are unpaid utilities. Firstly, I find that the copies of the altered utility invoices provided by the Landlord are unreliable because one cannot determine how the amount required to be paid has been calculated (or in other words, what the bill is for). Secondly, I find there is insufficient evidence that the Tenant agreed to pay a flat fee of \$100.00 per month for utilities (as the Landlord claimed) given that the tenancy agreement states that the Tenant's share is 50% of the *actual utility amount* and given the Tenant's evidence that this agreement was never changed. Consequently, the Landlord's application to recover unpaid utilities is dismissed without leave to reapply.

I find that the Landlord is entitled pursuant to s. 72(1) of the Act to recover the \$50.00 filing fee she paid for this proceeding. I Order the Landlord pursuant to s. 38(4) of the Act to keep the Tenant's security deposit of \$450.00 in partial payment of the monetary award. The Landlord will receive a Monetary Order for the balance owing of \$500.00.

Conclusion

A Monetary Order in the amount of **\$500.00** has been issued to the Landlord and a copy of it must be served on the Tenant. If the amount is not paid by the Tenant, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced 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: March 06, 2012.

Residential Tenancy Branch