



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR, MNSD, FF

Introduction

This hearing concerns the landlord's application for a monetary order as compensation for unpaid rent or utilities / retention of the security deposit / and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issue(s) to be Decided

Whether the landlord is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

In response to an application by the tenants a previous hearing was held on June 15, 2012, with a decision issued by that same date. Pursuant to that decision a monetary order was issued in favour of the tenants reflecting the double return of the security deposit (minus \$100.00), in addition to the filing fee. A subsequent application by the landlord for review of the decision did not succeed, and by way of review decision dated July 3, 2012, the original decision and order of June 15, 2012 were upheld.

There are 2 separate tenancies in the relationship between these parties. The first tenancy concerns the basement unit, and the second tenancy concerns the upstairs unit. There is no written tenancy agreement in either tenancy.

The first month-to-month tenancy in the basement unit began on November 15, 2010, and ended on September 14, 2011. Monthly rent of \$700.00 was due and payable in advance on or about the 15th day of each month. While the parties testified that a security deposit of \$350.00 was collected, I note that the decision of June 15, 2012 found that the security deposit was limited to \$300.00. During this tenancy the tenants were also responsible for paying the gas utility.

The landlord claims that the total gas bill for the basement tenancy was \$737.68. On July 15, 2011 the tenants paid \$270.00, and on September 20, 2011 the tenants paid an

additional \$100.00. The tenants therefore paid a total of \$370.00 (\$270.00 + \$100.00). The landlord claims that, accordingly, the balance still owed is \$367.68 (\$737.68 - \$370.00). The tenant disputes this aspect of the landlord's application, and claims that at the start of tenancy the tenants were informed that the cost of gas would be \$40.00 per month.

Effective from September 15, 2011, the tenants moved to the landlord's upstairs unit, where monthly rent of \$1,300.00 was due and payable in advance on or about the 15th day of each month. As rent was higher than in the basement unit, the tenants paid an additional \$300.00 to the landlord for security deposit, resulting in a total security deposit combined for both tenancies of \$650.00 (\$350.00 + \$300.00).

For the upstairs tenancy the tenants agreed to pay the hydro utility (Fortis) minus \$30.00 per month, which was to be paid by the renters in the basement unit. The landlord claims that the tenants failed to pay their share of hydro for December 2011 and January 2012 in the amount of \$250.00, in addition to hydro for the period from February 13 to March 26, 2012 in the amount of \$254.33 (total allegedly owed: \$504.33). In support of her claim the landlord submitted various bank records, in addition to some hydro statements. The tenant testified that for the first 3 months of the upstairs tenancy she paid hydro by way of deposits directly into the landlord's bank account, however, following that she claims to have paid hydro directly each month and up to the time when tenancy ended in mid March 2012.

By letter dated February 1, 2012, the tenants gave notice of their intent to end tenancy effective March 15, 2012. Later, by letter dated February 20, 2012, the tenants provided the landlord with their forwarding address. Subsequently, the tenants vacated the unit on March 13, 2012. Rent was paid to March 15, 2012. New renters moved into the unit on April 1, 2012. The landlord claims that the tenant back-dated her letter of February 1, 2012 and testified that on a date she cannot precisely recall, she only received verbal notice to end tenancy from the tenants. At odds with the landlord's testimony, the tenant claims that she gave notice verbally on February 1, 2012 and then deposited her letter of that same date into the landlord's mailbox later that same day.

In addition to unpaid rent / loss of rental income for the period from March 14 to 31, 2012, the landlord seeks compensation for unpaid utilities, reimbursement of the filing fee, and reimbursement of \$100.00 which she considers was incorrectly paid to the tenants out of their security deposit following the end of tenancy.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Black's Law Dictionary defines *res judicata*, in part as follows:

Rule that a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action.

Following from the above, as the disposition of the security deposit was addressed and decided in the decision of June 15, 2012, all aspects of the landlord's application which concern the security deposit are hereby dismissed.

During the hearing the parties both acknowledged that difficulties encountered between them arise, in part, from the absence of any written agreements concerning responsibility for payment of utilities. Where it concerns the basement tenancy, based on the documentary evidence and testimony, I find on a balance of probabilities that the landlord has established entitlement to **\$367.68*** as compensation for the gas utility. That is, I find it unlikely that the landlord gave assurances at the start of tenancy that the cost of monthly gas would be limited to \$40.00.

For the upstairs tenancy, I find that the landlord has provided insufficient evidence to support her claim that the tenants owe \$504.33 for hydro. I find on a balance of probabilities that the tenant paid hydro as claimed, and this aspect of the landlord's claim is, therefore, hereby dismissed.

In relation to the landlord's claim for unpaid rent / loss of rental income for the latter portion of March 2012, section 45 of the Act addresses **Tenant's notice**, in part, as follows:

45(1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

First, based on the documentary evidence and testimony, I find on a balance of probabilities that the tenants gave written notice by date of February 1, 2012 of their intent to end tenancy effective March 15, 2012. I further find that the landlord received this notice sometime before February 15, 2012.

As rent was payable on or about the 15th day of each month, proper notice to end the tenancy effective March 15, 2012 was required to be given by no later than February 14, 2012. In the circumstances of this dispute I have found that it was. I further find that despite the tenants having vacated the unit on March 13, 2012, rent was paid up to March 15, 2012. Accordingly, as notice to end tenancy was given in compliance with the Act, and rent was paid up to March 15, 2012, the landlord's application for loss of rental income for the period from March 14 to 31, 2012 is hereby dismissed.

As the landlord has achieved a measure of success with this application, I find that she has established entitlement to recovery of the **\$50.00*** filing fee.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$417.68** (\$367.68 + \$50.00). Should it be necessary, this order may be served on the tenants, filed in the Small Claims Court 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: September 10, 2012.

Residential Tenancy Branch