



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, O, FF

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent or utilities, for loss or damage under the Act, regulations or tenancy agreement, to retain the Tenants' security deposit, to recover the filing fee for this proceeding and for other considerations.

The Landlord said he served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail on July 24, 2012. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Are there rent or utility arrears and if so, how much?
2. Is the Landlord entitled to compensation for unpaid rent or utilities and if so how much?
3. Is there loss or damage and if so how much?
4. Is the Landlord entitled to compensation for loss or damage and if so how much?
5. Is the Landlord entitled to keep the Tenants' security deposit?

Background and Evidence

This tenancy started on April 15, 2011 as a month to month tenancy. Rent was \$1,800.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$900.00 on April 15, 2011. The Landlord said the Tenants moved out of the rental unit on June 30, 2012.

The Landlord said that the Tenants did not pay \$1,038.81 of Utility bills for water and sewer to the Municipality from April 15, 2011 to June 30, 2012. As a result the unpaid utilities were added to the Landlord's property taxes in February, 2012. The Landlord continued to say this was the first notice that he had that the utilities were not paid. The Landlord said he then spoke with the Tenants in February, 2012 about paying the utilities, but the Tenants refused to pay the full utility charges.

The Tenants said they did not know or believe the Municipal utility costs were their responsibility. The Tenant continued to say they did not transfer the Municipal utilities over to their name when they moved in and they did not know they were suppose to as these utilities were not specified in the tenancy agreement. As a result the Tenants said they were unaware of the Municipal utility bills until February, 2012 when the Landlord brought it to their attention. The Tenant said that they offered to pay half the bills because of the confusion about who was responsible for the Municipal utility bills.

The Landlord said there was no confusion as clause 4 in the Tenancy Agreement says "The Tenant pays for Utilities, Hydro, Cable, Phone and Internet." The Landlord continued to say that the total Municipal utility charges for the time period of April 15, 2011 to June 30, 2012 is \$1,038.81, which he has paid and the Landlord said he has included receipts for these amounts in his evidence package. The Landlord said he has made this application to recover the unpaid Municipal utility charges of \$1,038.81 and to recover the \$50.00 filing fee for this proceeding.

The Tenants said in closing that they should not be responsible for the full amount of the Municipal Utility bills as they were unaware they were expected to pay these costs and the Landlord did not advise them until February, 2012 of the amount owed which would have created financial issues for them if they would have paid the full utility bills.

Analysis

Section 26 says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 46 (6)(b) of the Act says that if utility charges are unpaid for more than 30 days after the tenant is give written demand for payment of them the landlord may treat the unpaid utility charges as unpaid rent and my give notice under this section.

The tenancy agreement states in clause #4 that the Tenants are responsible for Utilities. Water and sewer charges are considered as utility services. Consequently I find the Tenants are responsible for the Municipal utility charges for water and sewer. As well the Municipal utility charges are unpaid for more than 30 days and the Landlord has given the Tenants formal written notice in this application that the Municipal Utility bills are unpaid. Consequently I find for the Landlord and grant the Landlord monetary compensation of \$1,038.81 for unpaid Utilities/Rent.

As the Landlord has been successful in this matter, he is also entitled to recover from the Tenants the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenants' security deposit in partial payment of the unpaid utilities/rent. The Landlord will receive a monetary order for the balance owing as following:

	Unpaid Utilities/Rent:	\$ 1,038.81
	Recover filing fee	\$ 50.00
	Subtotal:	\$ 1,088.81
Less:	Security Deposit	\$ 900.00
	Subtotal:	\$ 900.00
	Balance Owing	\$ 188.81

Conclusion

A Monetary Order in the amount of \$188.81 has been issued to the Landlord. A copy of the Orders must be served on the Tenants: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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*.

Residential Tenancy Branch