



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, PSF, RP, RPP, FF, OPR, MND, MNR, MNSD

Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

This decision deals with two applications for dispute resolution, one brought by the tenants, and one brought by the landlord. Both files were heard together.

A number of the items claimed on the application are no longer relevant as the tenants have moved out of the rental unit and the landlord now has possession.

Therefore today we will be dealing with the landlords request for a monetary order for \$2925.00 and the tenants request for a monetary order for \$920.00.

Tenant's application

Background and Evidence

The tenants testified that:

- Internet was supposed to be included with the tenancy, but there was a two-month period during which the Internet did not work.

- The cable television also did not work for a two months period.
- I do webpage design and due to the fact that the Internet was not working I lost a webpage contract that would have paid me \$500.00.
- The landlord also stole some items and borrowed some items and they were never returned.

They are therefore requesting a monetary order as follows:

Loss of Internet service	\$60.00
Loss of cable TV service	\$160.00
Lost webpage contract	\$500.00
Items taken by the landlord	\$200.00
Total	\$920.00

The landlord testified that:

- neither the Internet nor the cable TV have ever stopped working, when the tenants complained of a problem I called Shaw cable and they inform me that both were working properly.
- She has not taken any items of the tenants, and anything she ever borrowed was returned to the tenants. She does not have any of the tenant's belongings.

Analysis

It's my finding that the tenants have not met the burden of proving their claim against the landlord, as it is basically just their word against that of the landlord.

The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met.

The tenants have provided no supporting evidence to prove their claim that there was an interruption in cable and Internet service.

The tenants have provided no supporting evidence to prove that they lost a \$500.00 contract.

The tenants have provided no sporting evidence to prove that the landlord has any of their belongings.

Therefore it's my decision that I will not allow the tenants monetary claim against the landlord.

Landlord's application

Background and Evidence

The landlord testified that:

- There was an excessive use of Hydro by the tenants and as a result she told the tenants of they were going to have to pay a portion of the Hydro Bill even though utilities had been included in the tenancy agreement.
- She had requested that they pay 40% of the utilities, however the tenants did not want to pay that much and eventually agreed to pay an extra \$100.00 per month.
- The tenants never made that \$100.00 payment.
- The tenants also failed to pay the full rent for the month of April 2013. There is still \$375.00 rent outstanding.

The landlord is therefore requesting an order to retain the full security deposit towards the claim and requests that a monetary order be issued for the difference, plus the filing fee.

The tenants testified that:

- The landlord wanted them to pay a large portion of the utilities even though they were included in the rent, and after some pressure from the landlord they did agree to pay \$100.00 per month.
- They later investigated with the residential tenancy branch and found out that this was an illegal rent increase and therefore they believe it should be denied.
- They admit that they did not pay \$375.00 of the April 2013 rent and therefore they do owe that money, however the landlord holds their security deposit of \$375.00 which will cover that debt.
- They decided not to pay the \$375.00 of the April 2013 rent as they were worried that the landlord would not returned their security deposit.

Analysis

It's my finding that the landlords request for the tenants to pay a portion of the utilities that had been included in the tenancy agreement is an illegal rent increase, and therefore I deny the landlords request for the \$100.00 utilities payment.

The residential tenancy act only allows landlord to raise the rent once every 12 month period, and then only by a certain amount and after giving a three month notice of rent increase in the required form.

In this case it has not been 12 month since the beginning of the tenancy, and the landlord did not give the proper notice of rent increase.

I will allow the landlords request for the outstanding rent of \$375.00 as the tenants admit that they did not pay \$375 of the April 2013 rent. The tenants did not have the right to withhold the rent and tell the landlord to use the security deposit to cover it.

I also allow the landlords request for recovery of the \$50.00 filing fee, as I have allowed a portion of the landlords claim.

Conclusion

Tenant's application

The tenant's application is dismissed in full without leave to reapply.

Landlord's application

I have allowed \$425.00 of the landlords claim and I therefore order that the landlord may retain the full security deposit of \$375.00, and I've issued a monetary order in the amount of \$50.00.

The landlord had also been claiming \$1700.00 for floor damage, however it appears some of the landlords evidence is missing, and therefore I dismiss that portion of the claim with leave to reapply.

The landlord had also been claiming May 2013 rent; however I also dismiss that portion of the claim with leave to reapply as a claim is premature at this point since it's not clear whether or not the unit will be re-rented at all in the month of May 2013.

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: May 01, 2013

Residential Tenancy Branch

