



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 dealt with an application from the landlord under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for unpaid utilities pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The tenant confirmed that the landlord handed him a 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) on November 14, 2012. The parties confirmed that this tenancy ended on the basis of the effective date identified in the 2 Month Notice, February 1, 2013. The landlord testified that she sent the tenant a copy of her dispute resolution hearing package by registered mail on February 14, 2013. Although the tenant said that he received the landlord's hearing package in ample time to prepare for this hearing, he said that he did not receive it until he returned from out of town on April 6, 2013. The tenant also confirmed that he received copies of two initial sets of written evidence with the landlord's dispute resolution hearing package. I am satisfied that the landlord served the above documents to the tenant in accordance with the *Act*, and that both parties had ample opportunity to prepare for a hearing of the landlord's application for dispute resolution.

The landlord also sent a fax to the Residential Tenancy Branch (RTB) at 10:42 p.m. on May 5, 2013. The landlord testified that she did not send a copy of this fax to the tenant. I have disregarded this late evidence, as the landlord did not provide a copy of this material to the tenant in advance of this hearing of her application, an application she filed almost three months earlier.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid utilities? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This tenancy began as a one-year fixed term tenancy on April 1, 2006. At the expiration of the initial term, the tenancy converted to a periodic tenancy. Monthly rent by the end of this tenancy was set at \$1,790.25, payable in advance by the first of each month, plus 60% of the utilities. The landlord continues to hold the tenant's \$850.00 security deposit, paid on March 7, 2006.

The landlord applied for a monetary Order of \$845.71. In the worksheet she attached to her applications, she included the following calculations for her requested monetary Order:

Item	Amount
Unpaid Utilities May 2011- January 2013 (21 months @ \$200.00 per month = \$4,200.00)	\$4,200.00
Garden Resod/Repair	150.00
Less Pre-Payment of Utilities April 2011	-2,000.00
Less Security Deposit plus Interest (\$850.00 + \$ 29.01 = \$879.01)	-879.01
Less Damage Compensation	-525.28
Total of Above Items	\$945.71

At the hearing, the parties agreed that the utility payments for this tenancy were usually made on an annual basis. The landlord would speak with the tenant every year and he would make his payment for utilities at that time. The landlord testified that she had actually only charged the tenant for 50% of the utilities rather than the 60% established in their tenancy agreement. The parties also agreed that as of 2011 they had replaced their previous payment arrangements with an agreement whereby the landlord would charge the tenant a flat rate of \$200.00 per month for utilities, payable once per year.

The tenant testified that he had requested but not been issued receipts for his utility payments. He testified that he could not recollect the last time he had made an annual utility payment, but agreed that they were supposed to be provided on an annual basis. The tenant did not dispute the landlord's testimony that the last payment she received

from the tenant for utilities was his \$2,000.00 payment in April 2011. The tenant also noted that the landlord had not included a request for the payment of unpaid utilities in a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) issued on December 2, 2012. The landlord responded that she had not included unpaid utilities in this 10 Day Notice because these payments were only due on an annual basis.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Based on the evidence before me and particularly the tenant's failure to dispute the landlord's sworn testimony that she received the tenant's last annual utility payment in April 2011, I find that the landlord is entitled to a monetary award for unpaid utilities for this tenancy. Based on the landlord's oral and written evidence, I find that the tenant paid \$2,000.00 towards a \$4,200.00 utility bill for the 21-month period from May 2011 to January 2013, the last month of this tenancy. This led to the landlord's entitlement to a monetary award of \$2,200.00 for unpaid utilities.

I dismiss the landlord's claim for a monetary award of \$150.00 to resod or repair the garden of this rental property without leave to reapply. I do so as the landlord admitted that this work has not been undertaken and her claim was an estimate of her loss in this regard.

I reduce the landlord's entitlement by \$525.28, the amount the landlord identified that she had agreed to compensate the tenant for work that he had performed at the rental property during this tenancy. This amount was identified in an invoice of November 25, 2012 for moving furniture, cleaning, placing tarps on damaged sections of the rental property, and for a replacement bed damaged by a leak in the ceiling of the rental unit. She agreed that this amount was to have been deducted from the tenant's rent but that this did not occur during this tenancy.

I also allow the landlord to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award issued in this decision. As the landlord has

been successful in this application, I allow her to recover her \$50.00 filing fee from the tenant.

Conclusion

I issue a monetary Order in the landlord's favour under the following terms which allows the landlord to recover unpaid utilities and the filing fee, less the amount of the tenant's security deposit and the invoiced compensation owed the tenant.

Item	Amount
Unpaid Utilities May 2011- January 2013 (21 months @ \$200.00 per month = \$4,200.00 - \$2,000.00 = \$2,200.00)	\$2,200.00
Less Security Deposit plus Interest (\$850.00 + \$ 29.30 = \$879.30)	-879.30
Less Damage Compensation	-525.28
Plus Filing Fee	50.00
Total Monetary Order	\$845.42

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

In reaching the above decision and as I informed the parties at the hearing, this decision does not limit the tenant from demonstrating a further entitlement to a monetary award in his own ongoing application for a monetary award for losses arising out of this tenancy, which I will address in a separate decision once that application has been heard.

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 14, 2013

Residential Tenancy Branch

