



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNR, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss; for a monetary Order for unpaid rent and utilities; and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord stated that on October 24, 2013, the Application for Dispute Resolution, the Notice of Hearing, and evidence the Landlord wishes to reply upon as evidence were sent to the Tenant, via registered mail, at the service address noted on the Application. The Agent for the Landlord cited a tracking number that corroborates.

The Agent for the Landlord stated that at the end of the tenancy the Tenant informed him that he could use the service address on the Application as a forwarding address. The Agent for the Landlord stated that he believes the service address is the Tenant's place of employment.

In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*; however the Tenant did not appear at the hearing.

Issue(s) to be Decided

Is the Landlord entitled to compensation for unpaid rent, for unpaid utilities, for NSF fees, and for damage to the rental unit?

Background and Evidence

The Landlord submitted a copy of a tenancy agreement that shows the parties entered into a fixed term tenancy agreement that began on September 15, 2012 and was to continue until September 30, 2013. The tenancy agreement indicates that the Tenant must pay \$1,200.00 in rent by the first day of each month and that the Tenant must pay 2/3 of the hydro, gas, water, and garbage costs for the residential complex.

The Agent for the Landlord stated that the understanding was that the Tenant would put the utility bills in his name and that he would collect 1/3 of the utility costs from the occupant of the lower rental unit. He stated that he provided the Tenant with a \$300.00 "advance" to ensure the Tenant was not placed at a disadvantage if the occupant of the lower unit did not pay 1/3 of the bills. He stated that he has never recovered the \$300.00 advance from the Tenant.

The Agent for the Landlord stated that the rental unit was vacated on July 15, 2013. The Agent for the Landlord stated that the Tenant still owes the following amount of rent:

- December of 2012 - \$1,200.00
- January of 2013 - \$700.00
- February of 2013 - \$200.00
- March of 2013 - \$700.00
- April of 2013 - \$700.00
- May of 2013 - \$700.00
- June of 2013 - \$700.00

The Landlord submitted two gas bills, totalling \$30.49. The Agent for the Landlord stated that the Tenant has not paid his portion of these bills and the Landlord is seeking compensation, in the amount of \$20.33.

The Landlord submitted a hydro bill, in the amount of \$20.09. The Agent for the Landlord stated that the Tenant has not paid his portion of this bills and the Landlord is seeking compensation, in the amount of \$13.39.

The Landlord submitted a hydro bill, in the amount of \$38.27, for the period between July 06, 2013 and August 16, 2013. The Agent for the Landlord stated that the Tenant has not paid his portion of this bill and the Landlord is seeking compensation of \$6.07. This claim is based on a prorated portion of the bill, as the Tenant only occupied the rental unit for 10 days of this 42 day billing period.

The Landlord submitted three water/sewer bills, totalling \$607.93. The Agent for the Landlord stated that the Tenant has not paid his portion of these bills and the Landlord is seeking compensation, in the amount of \$405.29.

The Landlord submitted a water/sewer bill, in the amount of \$128.57, for the period between July 01, 2012 and September 30, 2012. The Agent for the Landlord stated that the Tenant has not paid his portion of this bill and the Landlord is seeking compensation of \$14.29. This claim is based on a prorated portion of the bill, as the Tenant only occupied the rental unit for 15 days of this billing period.

The Landlord is seeking compensation, in the amount of \$20.70, to replace a padlock. The Agent for the Landlord stated that a garden shed was secured with a padlock at the start of the tenancy; that a key to the lock was provided to the Tenant; and that the padlock was missing at the end of the tenancy. The Landlord submitted a copy of a receipt for the padlock, in the amount of \$20.70.

The Landlord is seeking compensation, in the amount of \$420.00, for mowing the lawn. The Agent for the Landlord stated that the Tenant was obligated to mow the lawn during the tenancy; that the Tenant agreed to pay a landscaping company to mow the lawn during the tenancy; and that the Tenant failed to pay \$420.00 to this company for mowing the lawn. The Agent for the Landlord stated that the Landlord has paid the bill on behalf of the Tenant, as the company would not continue to mow the lawn at the rental unit if the bill was not paid. The Landlord submitted a copy of an invoice for mowing the lawn, which clearly shows that the bill is an "outstanding invoice left unpaid by Barry".

The Landlord is seeking compensation, in the amount of \$45.00, for an NSF fee. The Agent for the Landlord stated that a cheque tendered for rent for November of 2013 was returned to the Landlord due to insufficient funds. The Agent for the Landlord stated that the Landlord was charged \$12.00 for the returned cheque, although no evidence was submitted to corroborate that testimony. The Agent for the Landlord stated that the tenancy agreement does not require the Tenant to pay a fee for NSF cheques.

Analysis

On the basis of the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$1,200.00 by the first day of each month.

Section 26(1) of the *Act* requires tenants to pay rent to their landlord when it is due. On the basis of the undisputed evidence, I find that the Tenant still owes \$4,900.00 in rent to the Landlord for the period ending June 30, 2013.

On the basis of the undisputed evidence, I find that the Tenant has not paid 2/3 of the gas bills totalling \$30.49, as was required by the tenancy agreement. I therefore find that he owes \$20.33 for these two bills.

On the basis of the undisputed evidence, I find that the Tenant has not paid 2/3 of the hydro bill of \$20.09, as was required by the tenancy agreement. I therefore find that he owes \$13.39 for this bill.

On the basis of the undisputed evidence, I find that the Tenant has not paid 2/3 of the pro-rated portion of the hydro bill of \$38.27, as was required by the tenancy agreement. I therefore find that he owes \$6.07 for this bill.

On the basis of the undisputed evidence, I find that the Tenant has not paid 2/3 of the water/sewer bills totalling \$607.93, as was required by the tenancy agreement. I therefore find that he owes \$405.29 for these bills.

On the basis of the undisputed evidence, I find that the Tenant has not paid 2/3 of the pro-rated portion of the water/sewer bill of \$128.57 as was required by the tenancy agreement. As the Tenant only occupied the rental unit for 15 days of this billing period of 92 days, I find that the Tenant must pay his portion of 15/92 of this bill. 15/92 of this bill is \$20.96. I find that the Tenant must pay \$13.97 of this bill, which is 2/3 of \$20.96.

Section 67 of the *Act* authorizes me to pay a tenant to pay money to a landlord if the landlord suffers a loss as a result of the tenant not complying with the *Act* or the tenancy agreement. The *Act* does not confer authority to consider disputes between all types of relationships between parties. Only relationships between landlords and tenants that are directly related to the tenancy agreement can be determined under the *Act*.

I find that the \$300.00 "advance" the Landlord provided to the Tenant was not a term outlined by their tenancy agreement and was, essentially, a loan provided to the Tenant by the Landlord. I find that I do not have jurisdiction over this loan and I therefore decline to consider the claim to recover the \$300.00 advance.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that a damage or loss occurred; that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

On the basis of the undisputed evidence, I find that the Tenant failed to comply with section 37(2) of the *Act* when he failed to leave the padlock for the garden shed at the end of the tenancy. I therefore find that the Landlord is entitled to compensation for any damages that flow from the Tenant's failure to comply with the *Act*, which in these circumstances is \$20.70 to replace the padlock.

On the basis of the undisputed evidence, I find that the Tenant was obligated to maintain the lawn during the tenancy and that he did not pay a landscaping bill of \$420.00, for mowing the lawn during his tenancy. On the basis of the undisputed evidence, I find that the Landlord has paid the outstanding landscaping charges and I therefore find that the Tenant must pay the Landlord \$420.00.

As there is no evidence that the Tenant agreed to pay a fee for a NSF cheque, as is required by section 7 of the *Residential Tenancy Regulation*, I find that the Landlord is not entitled to claim a fee for an NSF cheque. As the Landlord has failed to submit documentary evidence to show that the Landlord was charged a \$12.00 fee for a NSF cheque, I find that the Landlord has failed to establish that the Landlord is entitled to recover this fee.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of \$5,899.75, which is comprised of \$4,900.00 in unpaid rent, \$459.05 in unpaid utilities, \$440.70 in damages, and \$100.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

Based on these determinations I grant the Landlord a monetary Order for the amount \$5,899.75. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia 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: February 03, 2014

Residential Tenancy Branch

