



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC

Introduction

This is an application filed by the Tenant to cancel a notice to end tenancy issued for unpaid rent, a monetary order for money owed or compensation for damage or loss and an order to comply with the Act.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended and have confirmed receipt of the notice of hearing package, I am satisfied that both parties have been properly served. The Tenant has confirmed receipt of the Landlord's documentary evidence package and has submitted a duplicate of the same package with a copy of the 10 day notice dated February 4, 2014.

During the hearing the Landlord clarified that he is no longer seeking an end to the tenancy and as such withdraws his notice to end tenancy dated February 4, 2014. No further action is required for possession as a result of the Landlord's request to withdraw his notice.

Issue(s) to be Decided

Is the Tenant entitled to a monetary order?

Background and Evidence

The Tenants seek a monetary order for \$3,600.00 for recovery of overpaid utilities over a 3 year period, which consists of \$75.00 per month, totalling, \$2,700.00. The Tenant states that the remaining portion of \$900.00 is for the loss of accrued interest of 6% that they would have had from their banking institution. The Tenant states that the Landlord has been charging them 75% of the utilities instead of the agreed upon 50%.

Both parties rely on the Landlord's submitted copies of utility invoices from BC Hydro and Fortis BC, totalling, \$4,898.67. The Tenant states that the Landlord is charging them 75% of the utilities instead of the agreed upon 50% and are seeking compensation for \$3,600.00. The Tenant states this is for \$75.00 per month for 3 years, totalling, \$2,700.00 and that the remaining \$900.00 is for loss of interest at 6% from their banking institution at ING. The Landlord disputes this stating that he was only charging the Tenants 3/5 of the total invoices and has provided copies of all of the related BC Hydro and Fortis BC invoices as well as copies of his hand written notes on rent and utility payments made by the Tenants. The Landlord has also submitted a copy of a signed tenancy agreement with the Tenants dated April 26, 2011 along with a 5 addendum pages. Both parties confirmed that the Landlord provided receipts for payments in the form of handwritten post it notes with notations for rent and utilities. The Tenant provided copies of a few of these "receipts". The Tenants state that the Landlord added the utilities portion of the addendum to the tenancy agreement without their knowledge or permission. The Landlord disputes this stating that the division of utilities has remained constant throughout the tenancy as per the signed agreement.

Analysis

The onus or burden of proof lies with the party who is making the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. This monetary claim is dismissed.

The Tenant has failed to provide sufficient evidence to satisfy me that utility payments (BC Hydro and Fortis BC) were for 75% of the invoiced amounts as opposed to the Landlord's claims of 3/5 = approximately to 60% based upon the copy of the signed tenancy agreement. The signed tenancy agreement only shows a condition for the distribution of utilities. "% of Hydro and Gas, (ie. # of Tenants in basement/ Total # of Tenants in house.)" The Tenant has not provided sufficient evidence to show that their responsibilities for utilities were for 50% of the totals.

The Tenant has failed to provide sufficient evidence to satisfy me that an overcharge was made and as such, the Tenant's application is dismissed.

Conclusion

The Tenant's application is dismissed.

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: March 26, 2014

Residential Tenancy Branch

