



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for cause, pursuant to section 55;
- a monetary order for unpaid rent and utilities, pursuant to section 67;
- a monetary order for damage to the rental unit, pursuant to section 67;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

The tenants "SN" and "KJM" did not attend this hearing although it lasted approximately 77 minutes. The landlord and her nephew agent, KS (collectively "landlord") attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that he personally served the tenant SN with a 1 Month Notice on August 5, 2014. Section 88 permits service of a 1 Month Notice by leaving a copy with an adult who apparently resides with the tenant in the rental unit. The tenants SN and KJM were both residing in the same rental unit at this time. In accordance with sections 88 and 90 of the *Act*, I find that that both tenants were served with the 1 Month Notice on August 5, 2014. The 1 Month notice stated an effective date of September 7, 2014. The landlord did not provide a copy of the 1 Month Notice with her Application.

The landlord testified that he personally served the tenant SN at the rental unit, with the application for dispute resolution hearing notice on November 13, 2014 and the written

evidence package on November 30, 2014. The landlord testified that he did not serve the tenant KJM with the notice or written evidence, as KJM had already vacated the rental unit one week after August 5, 2014, and did not provide a forwarding address to the landlord. In accordance with sections 89 and 90 of the Act, I find that the tenant SN was served with the landlord's notice and written evidence, as declared by the landlord.

I find that the tenant KJM was not served with the landlord's application notice or written evidence, as the tenant KJM had already vacated the rental unit and was not residing with the tenant SN and the landlord was aware of this fact. Accordingly, I dismiss the landlord's application as against the tenant KJM, with leave to reapply, as the tenant KJM must be served in accordance with section 89 of the Act.

During the hearing, the landlord withdrew his application for an order of possession for cause, as both tenants have already vacated the rental unit. Accordingly, this portion of the landlord's application is withdrawn.

Issues to be Decided

Is the landlord entitled to a monetary award for unpaid rent or utilities, arising out of this tenancy?

Is the landlord entitled to a monetary award for damage arising out of this tenancy?

Is the landlord entitled to a monetary award for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

The landlord testified that this periodic tenancy began on August 1, 2013. Monthly rent in the amount of \$1,200.00 is payable on the first day of each month. A security deposit of \$600.00 was paid by the tenants and the landlord still retains this deposit. A written tenancy agreement, signed by both parties, was provided with the landlord's Application. The landlord testified that the tenant KJM vacated the rental unit the week after August 5, 2014 and the tenant SN vacated the rental unit on December 5, 2014. Both tenants did not provide forwarding addresses to the landlord but the landlord

followed SN to her new rental unit when she was moving and he is aware of her new residence location. The landlord is not aware of where the tenant KJM is currently residing. The rental unit is a house that was occupied by the tenants on the main floor and two families of 9 people total, in the 2 basement suite units.

The landlord is seeking \$3,600.00 in unpaid rent, \$3,200.00 in damages, \$1,183.50 in gas bills and \$2,011.14 in hydro bills, which she said the tenants have not paid. She seeks a total amount of \$9,994.64, which was declared at the hearing. She also seeks to recover the filing fee of \$100.00 for this application from the tenants.

In the landlord's written evidence package, she provided a handwritten document of rent paid during this tenancy, claiming \$3,600.00 in unpaid rent. The landlord testified that rent is unpaid in the amount of \$1,200.00 for December 2013, \$600.00 for each of September and October 2014, and \$1,200.00 for November 2014. The landlord testified that the tenant SN only paid \$600.00 for each of September and October 2014, because the tenant KJM had vacated the rental unit and she would not be paying for his share of rent.

The landlord testified that he has not yet entered the rental unit to determine the extent of the damage caused by the tenants. He has not yet completed repairs to the rental unit. He stated that when he entered the rental unit prior to the tenant SN vacating on December 5, 2014, that he noticed painting would need to be done, as there was soot on the ceiling, curtains that were blackened, and paint that was lightened. He provided a painting estimate of \$1,850.00 to fill damage to the walls, sand the walls and apply 2 coats of paint. The estimate was valid for two weeks from November 25 to December 9, 2014, prior to this hearing. The landlord also claims \$500.00 for damage to the garage strip and a possible broken motor, as the tenants were manually opening and closing the garage door. The landlord claims \$150.00 for a broken master bedroom door, which requires a new handle. The landlord claims \$500.00 for carpet and blinds cleaning and \$200.00 for small miscellaneous repairs including a leaking toilet and garbage laying on the property.

The landlord provided a written tenancy agreement which indicated that water, electricity and gas were included in the \$1,200.00 monthly rental amount for the rental unit. However, the landlord provided an addendum to the tenancy agreement, signed by the landlord and the tenant SN regarding the tenants' responsibility to pay the entire amount for utilities, in addition to the \$1,200.00 monthly rent. This addendum was signed on the same day as the tenancy agreement, September 25, 2013. The landlord testified that this agreement was reached because the tenants wanted a cheaper monthly rental amount of \$1,200.00, as compared to \$1,500.00 per month, which was

offered by the landlord originally. Therefore, a verbal agreement was reached where the tenants would pay a maximum of \$200.00 for each of gas and hydro per month and any amount over \$200.00 for each utility would be paid by the landlord. The landlord stated that the maximum that the tenants would pay per month for both gas and hydro would be \$400.00, which equals \$200.00 for each of hydro and gas utilities. The landlord stated that the tenants agreed to pay for the utilities for the entire house, not just the tenants' rental unit. The addendum agreement states: "you pay all the utility services for household gas/hydro."

In the landlord's Application, she estimated a cost of \$100.00 for the November 2014 gas bill and \$161.00 for the October and November 2014 hydro bill, in her Application. However, the landlord amended these amounts at the hearing, stating that \$269.22 was unpaid for November 2014 gas costs and \$419.57 was unpaid for the period from October 2 to December 1, 2014 for hydro costs. These bills were not submitted with the landlord's application and the tenants are not aware of these amounts.

The landlord testified that the gas and hydro bills were originally in the tenant SN's name but were both transferred over to the landlord's name because the bills were unpaid and the hydro and gas were both shut off for different periods of time, causing disruption to the other tenants in the basement suite of the house.

The landlord provided a copy of the gas bills with billing dates of January 30, August 29, September 30 and October 30, 2014, which he stated that the landlord has paid on behalf of both tenants. One of these bills is in the tenant SN's name. The other bills are in the landlord's name after it was transferred over.

The landlord provided a copy of the hydro bills from the period from January 1 to October 1, 2014, stating that these amounts were paid by the landlord on behalf of the tenants. These bills are in the landlord's name, with none in the tenants' names, as the landlord transferred over the billing into her own name after the amounts were unpaid and service was disconnected.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the landlord, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claim and my findings around each are set out below.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

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. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

The landlord provided undisputed evidence at this hearing, as the tenants did not attend the hearing. The landlord stated that the tenants have not paid \$3,600.00 in rent for the months of December 2013, and September, October and November 2014. The tenants are required to pay their rent as per section 26 of the *Act* and failed to do so, while remaining in the rental unit. Accordingly, I find that the landlord is entitled to \$3,600.00 in rental arrears for this tenancy.

The landlord provided undisputed evidence that the tenants have not paid their gas and hydro utility bills for this tenancy. Although the tenancy agreement is conflicting in that it included all utilities in the monthly rental amount of \$1,200.00, the addendum tenancy agreement, which forms part of the main tenancy agreement and was signed on the same date, indicates that the tenant SN agreed to pay utilities for this tenancy. The landlord provided documentary evidence of these bills, which show that at the least, the gas bill was formerly in the tenant SN's name. The landlord testified that the hydro bill was also formerly in the tenant SN's name before it was transferred over to the landlord's name. I accept the landlord's testimony that an oral agreement was made that the tenants would pay up to \$400.00 maximum for both hydro and gas, during this tenancy.

The total costs for the gas bills are \$914.28, not including the November 2014 amount. The January 30, 2014 gas bill has the tenant SN's name on it with the rental unit address and is for the total amount of \$788.58. The landlord stated that \$537.48 was paid by the landlord for this bill, as the gas was shut off and had to be reconnected. He

was unaware of what months this gas bill included, as the previous gas bills were paid for directly by the tenant SN, as per the landlord's testimony. The landlord only provided the gas bills that were unpaid by the tenants, including: August 29, 2014 bill for \$162.17, September 30, 2014 bill for \$112.11 and October 30, 2014 bill for \$102.52.

The total costs for the hydro bills from January 1 to October 1, 2014, are \$1,591.57, not including the October 2 to December 1, 2014 amount of \$419.57. The hydro bill amount above includes \$262.50 including GST for service reconnection, after the tenants failed to pay the bills and the connection was cut off, as per the landlord's evidence.

Therefore, on a balance of probabilities and considering all of the landlord's undisputed evidence, I find that the landlord is entitled to \$914.28 for gas and \$1,591.57 for hydro costs. The total amount awarded for these utilities is \$2,505.85. I find that the landlord is entitled to this amount, as the tenants were still residing in the rental unit during the period when these utilities were used, with the exception of the tenant KJM who moved out in August 2014. I do not find that the landlord is entitled to the utility amounts for October and November 2014, as none of the bills were submitted with the landlord's Application. The tenants did not have notice of these amounts, as they were not provided with copies of these bills for amounts which fluctuate from month to month, unlike the rental amount which stayed the same.

The landlord has not yet entered the rental unit to assess the damage and has not yet repaired any potential damage or expended any monies towards repairs. The landlord has not provided any receipts, photographs, condition inspection reports or other documentary evidence to show that any damage was caused by the tenants in the rental unit, after both tenants vacated the rental unit. The landlord made her application on November 12, 2014 and filed her written evidence package on November 28, 2014. The tenant SN vacated the rental unit on December 5, 2014. The landlord stated that he had not yet had time to enter the rental unit to assess the damage or complete repairs because he was busy with school exams and he was assisting the landlord on a short notice basis, with her Application. I find that the landlord's application for a monetary order for damage to the rental unit and a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, is premature as it was made before the tenant SN vacated the rental unit; accordingly, I dismiss this portion of her application, with leave to reapply.

The landlord continues to hold the tenants' security deposit of \$600.00. She has applied to retain this security deposit in partial satisfaction of the monetary award. In accordance with the offsetting provisions under section 72 of the Act, I find that the

landlord is entitled to retain this security deposit in partial satisfaction of the monetary award.

As the landlord was successful in her Application, she is entitled to recover the \$100.00 filing fee.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$5,605.85 against the tenant SN only, as follows:

Item	Amount
Hydro costs	\$1,591.57
Gas costs	914.28
Unpaid rent	3,600.00
Less Security Deposit	-600.00
Recovery of Filing Fee for this application	100.00
Total Monetary Order	\$5,605.85

The landlord is provided with a monetary order in the amount of \$5,605.85 in the above terms and the tenant SN must be served with this Order as soon as possible. Should the tenant SN fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The landlord's application for a monetary order for damage to the rental unit and a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, is dismissed with leave to reapply. The landlord's application for an order of possession for cause, is withdrawn.

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: December 24, 2014

Residential Tenancy Branch

