



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

The landlord applies to recovery the tenants' unpaid share of utility costs.

Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that the landlord is entitled to the amounts requested?

Background and Evidence

The rental unit is the three bedroom upper portion of a house. The lower portion contains a second rental suite, rented to others.

There is a single oil-fired furnace for both suites, providing heat regulated by a single thermostat located in the upper suite. The power and water are each monitored by a single meter to the house.

The tenants began occupying the premises in February 2011. At that time the rent was \$1450.00 per month and the arrangement for utilities was that the upper tenants would pay \$200.00 per month and the lower \$110.00.

In April 2013 the landlord, dissatisfied with the fact that utility charges were significantly exceeding the \$310.00 she was receiving, negotiated a new tenancy agreement with the respondent tenants (and her new tenants in the lower suite) that more accurately charged the tenants for actual utility usage in the home.

That tenancy agreement, effective April 1, 2013, lowered the monthly rent by \$50.00 and obliged the upper tenants to pay 65% of water, hydro and oil bills. It was also agreed that when the lower suite happened to be vacant the upper tenants would be

required to pay 100% of the charges, but the landlord is not claiming that higher percentage for any of the periods relevant to this proceeding.

The landlord was tardy in her bookkeeping. She neglected to carry out the normal task of presenting utility bills to her tenants and requesting payment of their share. As a result, by agreement starting in July 2013, the respondent tenants began paying an additional \$200.00 per month to be credited to the utility costs.

The landlord did not account to the tenants for their share of actual utilities until about twenty months after April 2013. In November 2014 the landlord presented a notice of rent increase along with a calculation of actual utility usage since April 2013 and some utility bills.

The landlord testified that she had been confronted with a number of personal hurdles in the interim, preventing her from rendering a timely accounting of the utility costs.

The tenants say they had been assuming that the \$200.00 per month they had been paying toward utilities had been roughly sufficient. They were under the impression that the landlord would have informed them had it been otherwise. The tenants say they were stunned by the landlord's accounting and her claim for over \$4000.00 in back charges. They say that had they known about the excessive consumption they would have determined that it was beyond their financial means. As well, they could have taken steps to a rein in the usage.

Analysis

The landlord has provided billing histories from the Hydro, water and heating oils suppliers to confirm that the tenants' 65% share of total usage during this tenancy amounted to a cost of \$8519.24 (after calculation an arithmetic error noted by the landlord at hearing). The tenants do not take serious issue with those calculations and I find that the amount is a correct one based upon documented charges from the utility providers.

Under the terms of the tenancy agreement, that is what is owed.

However, the tardiness of the landlord in rendering timely accounts of these charges, coupled with her unremarked upon receipt of payment by the tenants of \$200.00 per month for utilities has caused the tenants to be significantly prejudiced by the landlord's delay.

Had they known of the actual usage they could have ended the tenancy or taken steps to rein in usage to a more affordable level.

In all the circumstances the facts merit a reduction in the additional usage charges over the total \$3200.00 the tenants paid for utilities. I calculate the additional charges to be \$5319.29 over the total amount the tenants paid and I reduced that amount by half to \$2659.65.

I award the landlord \$2659.65 for the balance of utility costs due under the tenancy agreement. As the landlord has been the author of her own misfortune in this matter, I decline to grant recovery of the filing fee.

I authorize the landlord to retain the \$697.50 security deposit in reduction of the amount awarded. There will be a monetary order against the tenants jointly and severally for the remainder of \$1962.15

Conclusion

The landlord's application is allowed in part. I grant her a monetary order of \$1962.15.

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 31, 2015

Residential Tenancy Branch

