



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order of Possession for unpaid rent or utilities; for a Monetary Order for unpaid rent and utilities; for an Order permitting the landlord to keep all or part of the tenant's security deposit; and to recover the filing fee from the tenant for the cost of this application.

The tenant, an advocate for the tenant and the landlords attended the conference call hearing and gave sworn testimony. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing, and the parties were permitted to provide additional evidence after the hearing had concluded. The tenant confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

At the outset of the hearing the parties advised that the tenant is no longer residing in the rental unit, and therefore, the landlord withdraws the application for an Order of Possession.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent and utilities?
- Is the landlord permitted to keep all or part of the security deposit?

Background and Evidence

The parties agreed that this tenancy started on September 01, 2013 for a fixed term tenancy of six months. The tenancy then reverted to a month to month tenancy and ended on August 23, 2014. Rent for this unit was \$1,000.00 per month due on the 1st of each month in advance. The tenant paid a security deposit of \$500.00 on August 19, 2013.

TG testified that the tenant owes a total amount in unpaid rent of \$2,510.00. This amount has accumulated between December, 2013 and August, 2014. The landlord referred to the rent ledger in his documentary evidence showing the amounts paid and the amounts outstanding for each month. The landlord seeks to recover the amount of \$2,510.00 from the tenant.

TG testified that the tenant was supposed to put utilities into her own name when she moved into the unit. TG did not become aware straight away that the tenant had not done this as Fortis was on strike from September, 2013 to March, 2014. The Fortis bill was sent to TG for an amount of \$2,270.50. The tenant failed to pay this bill. Another bill came from Fortis for March to May, 2014 this brought the total owed as \$2,780.05. The next bill for May to July came and showed an accumulated amount of \$3,064.53.

TG sent in evidence after the hearing had concluded and in this evidence TG submitted that he had made a mistake in his accounting and he had found the cheque from the ministry for \$286.05 which he had paid into his bank account. The landlord also submitted that the utility bill for September, 2013 to March, 2014 shows a credit of

\$308.34 which the landlord had paid for a previous tenancy prior to the tenant taking possession of the house. This makes the total amount owed for that period when the tenant did reside in the unit as \$2,578.84 not \$2,270.50 as stated at the hearing. The amounts owed for the next bills are therefore \$509.55; \$284.48.

A disconnection Notice came from Fortis in July, 2014 as the tenant did not pay the bills. The tenant then paid \$284.48 to the landlord as the Fortis account remained in the landlord's name. This brought the amount owing as of \$2,780.05. Fortis took measures to recover this amount from the landlord and put the debt with a collection agency. TG therefore paid the tenant's utilities to Fortis in the amount of \$2,780.05 to prevent Fortis disconnecting the utilities on August 23, 2014.

TG testified that another Fortis bill came for a period when the tenant was still residing in the unit. This was for a period between July 17, 2014 and September, 08, 2014. This bill was for \$223.64. TG testified that all the utility bills have been sent to the tenant and a written demand for payment was also sent to the tenant.

TG seeks to recover the rent and utilities owed along with the \$100.00 filing fee and seeks an Order to keep the security deposit in partial satisfaction of the landlords' claim.

CP testified on behalf of the tenant and testified that the tenant agreed she does owe rent to the landlord of \$2,510.00 with some reservations; however, disagreed with some of the dates the landlord has entered on the rent ledger as to when rent was paid.

CP testified that the tenant has a head injury and CP is a friend of the family who has been working with the tenant as her advocate to sort out the tenant's payments. It was noticed that the tenant had paid several amounts in cash and these were not noted by the landlord. CP spoke to TG on June 26, 2014 at that time TG admitted that he had received an additional amount of \$500.00 from the tenant which he had inadvertently put into the wrong account. TD did amend this on the rent ledger; however CP has

reservations if the landlord has made similar mistakes that have not been picked up for other cash payments for utilities.

TG testified that he has never received cash from the tenant and it is his practise not to accept cash as everything has to go through the bank. The amount in question was a cheque from welfare which the landlord had inadvertently put in the wrong account for \$570.00.

CP testified that she has kept notes when dealing with the tenant's affairs and a note dated January 26, 2014 states that CP had found the \$500.00 payment and the amount paid by welfare was for \$570.00 on February 26, 2014.

TG testified that he has a signature from a person in the Ministry of families and Children for the amount of \$570.00 paid by that Ministry which has gone into the landlord's account and is shown on the rent ledger.

CP testified that she has been assisting the tenant in her dealings with income assistance to get the tenant's rent and utilities paid. They would not pay the tenant's utilities as they said there was nothing in the tenancy agreement that shows the tenant has to pay utilities.

The landlord testified that the tenancy agreement clearly shows that utilities are not included in the rent. The landlord has provided a copy of the tenancy agreement in documentary evidence.

CP testified that the landlord has provided incorrect information about the utilities. The landlord said Fortis was on strike until March, 2014; however, they came out and read the meters in January, 2014. CP testified that she has two bills not submitted by the landlord for November and January which has the amounts written on them as paid. The tenant had informed CP that she had given the landlord cash for the November bill of \$131.11. The other bill was paid by the Ministry on February 20. The landlord was

sent a cheque from the Ministry for \$286.05 and this has been cashed by the landlord. CP testified that they have proof that this cheque was sent to the landlord and cashed by the landlord. CP testified that they received a cheque history query form from the Ministry which states that a cash payment was made to the tenant in February, 2014 for \$545.58 and two cheques were sent to the landlord and cashed by the landlord. One was for the amount of \$570.00 which is shown on the landlords accounting. The other is for \$286.05 which is not accounted for.

TG testified that the bill was an estimate and the tenant did not give TG any cash. Where the bill shows these amounts have been paid it was a payment made by TG after he paid the bills on line. TG testified that the CP had stated that the ministry would not pay the utilities but now CP is saying they sent the landlord a cheque for utilities.

The tenant agreed the landlord may keep the security deposit of \$500.00 to offset against the unpaid rent and utilities.

The tenant confirmed her mailing address at the hearing as the PO Box address shown on the landlord's application.

Analysis

I have carefully considered all the evidence before me, including the additional evidence sent by the parties, and the sworn testimony of both parties. With regard to the landlord's claim to recover unpaid rent, the tenant agreed that there is unpaid rent of \$2,510.00. I am satisfied with the undisputed evidence before me that the tenant owes this amount of rent to the landlord. I therefore uphold the landlord's claim to recover the amount of **\$2,510.00** from the tenant.

With regard to the landlord's claim for unpaid utilities; I find that the tenancy agreement shows that electricity and heat are not included in the rent and are therefore the tenant's responsibility. I have considered the submissions made from both parties during and

after the hearing; the tenant's advocate has provided a copy of the cheque history payments from the Ministry. These show that the landlord was sent the cheque for \$286.05 for utilities. The landlord's late submissions agree that he did receive this amount and he had made a mistake in his accounting.

On this cheque query sheet from the Ministry it also shows the tenant was sent an amount of 545.58; in this matter the tenant has the burden of proof to show that this amount and any other cash payments were made to the landlord for utilities, In the absence of any corroborating evidence and as this cheque was sent directly to the tenant I have insufficient evidence that the tenant paid this amount to the landlord.

The landlord has submitted that he made another error in his accounting and that the original bill for September to March shows an amount of \$308.34 had been paid by the landlord and this showed as a credit on the tenant's bill; however, it had been paid prior to this tenancy starting and should not have credited the tenant's bill. Therefore, the landlord seeks to revise his claim and increase it by \$308.34.

The landlord has a duty to ensure all evidence is provided prior to the hearing and that this evidence and testimony is accurate. I find the landlord has made two significant mistakes in his accounting concerning the amount received by the Ministry and the total amount owed by the tenant for utilities on the first utility bill. However, the evidence is compelling and does show that the amount paid of \$308.34 was paid prior to the tenancy starting as it is a credit on that first bill and has nothing to do with the utilities owed by the tenant. I therefore find the amount owed by the tenant is **2,578.84** for the period between September 01, 2013 and March 15, 2014. For the next period between March 15, 2014 and May 16, 2014 I find the tenant owed **\$509.55**; for the period between May 16, 2014 and July 17, 2014 the tenant owed **\$284.48**. For the period between July 17, 2014 and August 23, 2014, when the tenant vacated the rental unit, I find the tenant owes a prorated amount of that bill which I have calculated on a daily rate of 37 days at \$4.21 a day to an amount of **\$156.12**. The total amount owed for utilities was \$3,528.99. The tenant has made two payments of **\$284.48** and **\$286.05**

towards utilities. I therefore find the landlord is entitled to recover the total amount of **\$2,958.46**.

I Order the landlord to keep the tenant's security deposit of **\$500.00** pursuant to s. 38(4)(b) of the Act in partial satisfaction of the landlord's monetary claim.

As the landlord's claim has merit I find the landlord is entitled to recover the filing fee of **\$100.00** from the tenant pursuant to s. 72(1) of the Act. A Monetary Order has been issued to the landlord for the following amount:

Unpaid rent	\$2,510.00
Unpaid utilities	\$2,658.46
Filing fee	\$100.00
Less security deposit	(-\$500.00)
Total amount due to the landlord	\$4,768.46

Conclusion

For the reasons set out above, I grant the landlord a Monetary Order pursuant to Section 67 and 72(1) of the Act in the amount of **\$4,768.46**. This Order must be served on the Respondent and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the Respondent fails to comply with the Order.

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 07, 2015

Residential Tenancy Branch

