



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF; OLC, FF

Introduction

These applications were heard over two hearing dates. At the first hearing scope of this application was narrowed. This decision should be read in conjunction with the interim decision dated 18 March 2015.

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

- a monetary order for unpaid rent and for damage to the unit 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;
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

This hearing also dealt with the tenants' application pursuant to the Act for:

- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Although the tenant BH (the tenant) attended at the first hearing date and presented evidence, she was not present at the second hearing date. The landlord and his spouse attended both hearing dates.

Preliminary Issue – Tenants’ Application Dismissed

The tenants did not attend the second hearing date to finish providing evidence and give the landlord an opportunity to cross examine the tenant on her evidence. I waited until 1142 in order to enable the applicant to connect with this reconvened hearing scheduled for 1100.

Rule 10.1 of the Rules of Procedure provides that:

10.1 Commencement of the hearing The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

Accordingly, in the absence of the tenants’ participation in this reconvened hearing, which resulted in the landlord being unable to cross examine the tenant on her evidence, I order the tenants’ application dismissed without leave to reapply.

Preliminary Issue – Service

The landlord testified that he only served the tenant with notice of this hearing and not the tenant RH. I informed the landlord at the hearing that as he had not served the tenant RH with notice of this hearing I could not proceed against the tenant RH. The landlord’s application as against RH is dismissed with leave to reapply.

Practically, my dismissal of the landlord’s claim against RH is not a barrier to recovery against the tenant. Pursuant to Guideline 13:

Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.

The landlord testified that he served the tenant with the notice of reconvened hearing on 30 March 2015 by registered mail. I was provided with a copy of the Canada Post receipt that shows the same. On the basis of this evidence, I find that the tenant has been served with notice of this reconvened hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and for damage arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

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

This tenancy began 15 November 2014. The parties entered into a tenancy agreement dated 22 October 2014. Monthly rent of \$910.00 was due on the fifteenth. In part "B" of clause 3 of the tenancy agreement the notation "40% gas & electricity" is set out. Both parties understood that this term meant that the tenants were responsible for paying 40% of the utilities. At the beginning of the tenancy, the landlord collected a security deposit in the amount of \$455.00, which he continues to hold.

On 1 March 2015, the tenant sent a text to the landlord indicating that the tenants had vacated the rental unit. New tenants began occupying the rental unit as of 15 March 2015.

The landlord seeks compensation in the amount of \$1,382.00:

Item	Amount
Unpaid February Rent	\$910.00
Natural Gas Jan.7-Feb.4	88.86
Hydro Jan.8-Mar.1	96.43
Natural Gas Feb.4-Mar.1	87.40
Utilities Arrears Jan.31	2.80
Garbage Removal	97.00
Registered Mailing	25.10
Photographs	11.86
Registered Mailing	12.55
Recovery of Filing Fee for this Application	50.00
Total Monetary Order Sought	\$1,382.00

The landlord provided a copy of the tenants' rent cheque dated 15 February 2015. This cheque was returned for insufficient funds. The landlord testified that the last rent payment from the tenants was received in January for rent due 15 January 2015.

The landlord submitted that the tenants should pay 80% of the utilities for the period in which the upper unit was vacant as they were the sole recipients of the services. The landlord

suggests that there was a verbal agreement to this higher amount of utilities. The upper rental unit was vacated at the end of January.

The landlord provided me with a copy of a receipt issued to the tenants dated 31 January 2015. That receipt sets out that the tenants paid \$260.00. The invoices summarized on that receipt total \$262.80. There is a note that says "amount owing \$2.80 – to be added to next bill".

The landlord provided copies of various utility invoices:

- The landlord provided a copy of the natural gas bill dated 4 February 2015. The invoice covers a billing period from 7 January 2015 to 4 February 2015. The total amount of the invoice is \$222.16. The landlord seeks compensation for 40% of this invoice or \$88.86.
- The landlord provided a copy of the hydro invoice that covers the period 7 November 2014 to 7 January 2015. The total amount of the invoice is \$370.21. The landlord seeks payment of an outstanding amount of \$2.80 for this invoice.
- The landlord provided a copy of the natural gas bill dated 11 March 2015. This invoice covers a 61-day billing period from 8 January 2015 to 9 March 2015. The total amount of the invoice is \$179.51. The landlord calculated the per diem rate of \$2.94. The landlord seeks compensation at this per diem rate of 24 days at 40% and 29 days at 80%. The total compensation requested in relation to this invoice is \$96.43.
- The landlord provided a copy of the hydro invoice that covers the period 4 February 2015 to 6 March 2015. The total amount of the invoice is \$131.01. The landlord calculated the per diem rate of \$4.37. The landlord seeks compensation at this per diem rate of 25 days at 80%. The total compensation requested in relation to this invoice is \$87.40.

The landlord provided me with a copy of an invoice made out to the tenants. At the hearing the landlord indicated that he prepared this invoice. The landlord testified that the labour in this invoice is his own and that he charges a regular rate of \$25.00 per hour for his property management services. The invoice sets out a charge of \$97.00 for

cleaning and garbage removal determined on the following basis:

- Garbage Removal (Labour) \$50.00
- Garbage Removal (Disposal) \$22.00
- Cigarette Removal (Labour) \$25.00

The landlord provided me with a copy of a receipt from a garbage transfer station dated 4 March 2015. The receipt is in the amount of \$22.00.

The landlord provided me with photographs:

- Landlord photographs 7-1, 7-2, 7-3, 7-4 show a truck with debris in the bed.
- Landlord photograph 7-5 shows a flower pot with cigarette debris in it.

The landlord provided me with receipts for photograph development and the cost of sending registered mailings.

Analysis

Subsection 26(1) of the Act sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

The tenancy agreement provides that rent is payable on the fifteenth of each month. The tenants' cheque for rent due 15 February 2015 was returned as the tenants' account contained insufficient funds. As the tenants continued to occupy the rental unit until 1 March 2015 rent was due on 15 February 2015. The tenants have not shown any entitlement to deduct any amounts from rent. The landlord has proven his entitlement to February's rent in the amount of \$990.00.

The tenancy agreement includes the notation "40% gas & electricity". At all material times the parties conducted themselves as though this clause required the tenants to pay 40% of the utilities. I find that it was a term of the tenancy agreement that the tenants were responsible for 40% of the utilities. The landlord submits that when the upper unit was vacated the tenancy agreement was renegotiated so that the tenants were responsible for 80% of the utilities. I do not agree. The only contract is the written tenancy agreement dated 22 October 2014. There are no subsequent modifications or addenda to this agreement. The landlord is not entitled to unilaterally change the terms of a contract as he sees fit.

I find that, at all material times, the tenancy agreement provided that the tenants were responsible for 40% of the utilities. The landlord has provided me with copies of the invoices for the unpaid utilities and a receipt showing an outstanding balance. I accept the landlord's testimony that these amounts remain unpaid. I accept the landlord's calculation of days of occupancy and the per diem rate. I find that the landlord was entitled to collect 40% of the unpaid utility amounts.

I find that the landlord has proven his entitlement to \$197.69 in respect of utilities:

Item	Amount
Utilities Arrears	\$2.80
Natural Gas Jan.7-Feb.4	88.86
Hydro Jan.8-Mar.1 53d @ \$2.94	62.33
Natural Gas Feb.4-Mar.1 25d @ \$4.37	43.70
Total Utilities	\$197.69

The landlord has provided testimony, receipts and photographs as evidence for his claim to recover his costs of removing and disposing of debris from the rental unit. I accept the

landlord's costs of cleaning at an hourly rate of \$25.00. I accept that this is his regular rate for performing these services.

Subsection 32(2) of the Act requires a tenant to maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. *Residential Tenancy Policy Guideline*, "1. Landlord & Tenant – Responsibility for Residential Premises" states:

The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. ...

I find, on the basis of the documentary evidence before me and the landlord's testimony, that the tenants left the rental unit in a condition that does not comply with the standards required under the Act. The tenants failed to comply with the Act by leaving debris in and around the rental unit. I find that the landlord is entitled to compensation for the tenants' failure to comply with the Act. I find that the landlord is entitled to \$97.00, his costs of remedying the tenants' failure.

The landlord has claimed for his costs associated with providing photographic evidence the costs associated with serving documents in these proceedings. These costs are best characterized as "disbursements" incurred in the course of these proceedings.

Section 72 of the Act allows for repayment of fees for starting dispute resolution proceedings and charged by the Residential Tenancy Branch. While provisions regarding costs are provided for in court proceedings, they are specifically not included in the Act. I conclude that this exclusion is intentional and includes disbursement costs. Furthermore, I find that disbursements are not properly compensable pursuant to section 67 of the Act as the tenants' contravention of the Act is not the proximate cause of the expense.

I find that the landlord is not entitled to compensation for the landlord's disbursement costs as disbursements are not a cost that is compensable under the Act.

As the landlord has been successful in his application he is entitled to recover his filing fee for this application from the tenant.

The landlord applied to keep the tenants' security deposit. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award. No interest is payable over this period.

Conclusion

The tenants' application is dismissed without leave to reapply.

The landlord's application against the tenant RH is dismissed with leave to reapply.

I issue a monetary order in the landlord's favour in the amount of \$799.69 under the following terms:

Item	Amount
Unpaid February Rent	\$910.00
Natural Gas Jan.7-Feb.4	88.86
Hydro Jan.8-Mar.1	62.33
Natural Gas Feb.4-Mar.1	43.70
Utilities Arrears Jan.31	2.80
Garbage Removal	97.00
Recovery of Filing Fee for this Application	50.00
Offset Security Deposit	-455.00
Total Monetary Order	\$799.69

The landlord is provided with this order in the above terms and the tenant BH must be served with this order as soon as possible. Should the tenant BH 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.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: May 21, 2015

Residential Tenancy Branch

