



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord on January 21, 2015, seeking to obtain a Monetary Order for: unpaid rent or Utilities; to keep all or part of the security and or pet deposit; for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement; and to recover the cost of the filing fee from the Tenant for this application.

The hearing was conducted via teleconference and was attended by the Landlord, The Landlord's two witnesses, and the Tenant. Each person gave affirmed testimony. The Tenant confirmed receipt of the application, evidence, and hearing documents served by the Landlord.

I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each person was given the opportunity to provide their evidence orally, respond to each other's testimony, ask the witnesses questions, and to provide closing remarks. Following is a summary of the submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Has the Landlord proven entitlement to monetary compensation?

Background and Evidence

Witness # 1 testified that she was present on Canada Day July 1, 2014, when the Tenant told the Landlord that he was "extremely happy with the suite". Witness # 1 also testified that the Landlord had told her that the Tenant had fallen short on his rent and utility payments.

Witness #2 provided testimony that he was witness to the Landlord personally serving the Tenant with her hearing documents and evidence.

The undisputed evidence was that the Landlord and Tenant entered into a written month to month tenancy agreement and addendum that began on July 1, 2014. Rent of \$1,000.00 was due on or before the first of each month and the Tenant was required to pay 50% of the utilities. On June 11, 2014 the Tenant paid \$500.00 as the security deposit. Both parties attended and signed the move in condition inspection report form on June 11, 2014.

The Landlord testified that on December 23, 2014 the Tenant gave her notice that he would be vacating the rental unit effective December 31, 2014. Then on January 13, 2015 the Landlord received the Tenant's forwarding address on a document indicating the Tenant will be submitting a bill to the Landlord for work he performed.

The Landlord has filed application for \$861.23 which is \$961.23 less a \$100.00 payment received from the Tenant in October or November 2014. She said the Tenant told the Landlord to apply the \$100.00 to rent or utilities, whichever she chose. The amount claimed consists of \$300.00 owed for October 2014 rent, \$248.29 for Hydro, \$142.94 for Natural Gas, and \$270.00 for Internet charges, less the \$100.00 payment. .

The Tenant testified and confirmed that he had only paid \$700.00 towards October 2014 rent and that he gave the Landlord the additional \$100.00 as she described. The Tenant confirmed that although he was required to pay 50% of the utilities no payments were made because of repairs he completed inside the rental unit.

The Tenant asserted that there had been a flood in the rental unit and after he completed the repairs he submitted a bill to the Landlord for the work he had performed. He said he took it upon himself to do the repairs and that he did not have a written agreement with the Landlord for repairs or authorizing him to deduct the repair costs from the amount he owed for rent and utilities.

The Landlord submitted, among other things, copies of the tenancy agreement and addendum titled "Conditions of Tenancy" into evidence. Item 13 of the Conditions of Tenancy states: "To pay his/her own service accounts such as heat, light, phone, and cable."

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Section 7 of the Act provides as follows in respect to claims for monetary losses and for damages made herein:

7. Liability for not complying with this Act or a tenancy agreement

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 26 of the Act stipulates that a tenant must pay rent in accordance with the tenancy agreement; despite any disagreements the tenant may have with their landlord.

Notwithstanding the Tenant's submission that he took it upon himself to conduct repairs to the rental unit, the undisputed evidence was the Tenant was required to pay rent of \$1,000.00 plus 50% of the utilities in accordance with the tenancy agreement and addendum.

As of the end of this tenancy the Tenant had not paid the balance owed for October 2014 rent of \$200.00 (\$300.00 - \$100.00 payment) or the \$661.23 owed for utilities (\$248.29 + \$142.94 + \$270.00) which I find to be a breach of section 26 of the Act and the tenancy agreement and addendum. Accordingly, I grant the Landlords application for unpaid rent and utilities in the amount of **\$861.23**.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Landlord has succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee, pursuant to section 72(1) of the Act.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

| | |
|--|------------------------|
| Unpaid Rent and Utilities | \$861.23 |
| Filing Fee | <u>50.00</u> |
| SUBTOTAL | \$911.23 |
| LESS: Security Deposit \$500.00 + Interest 0.00 | <u>-500.00</u> |
| Offset amount due to the Landlord | <u>\$411.23</u> |

Conclusion

The Landlord has succeeded with her Application and was awarded \$911.23. The award was offset against the Tenant's \$500.00 security deposit leaving a balance owing to the Landlord of **\$411.23**.

The Landlord has been issued a Monetary Order for **\$411.23**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with the British Columbia Small Claims 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 13, 2015

Residential Tenancy Branch

