



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, RR, FF

Introduction

This hearing dealt with cross applications. The landlord is seeking a monetary order and an order to retain the security deposit in partial satisfaction of the claim. The tenants have filed an application seeking the return of the security deposit and a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement. . Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Preliminary Issues

The landlord originally filed an application seeking an order of possession and the tenants filed to dispute that notice, however, at the outset of the hearing both parties advised that the tenants moved out and that the tenancy was no longer an issue, and that each party only seeks a monetary order. Based on the agreement of both parties I dismiss the landlords' application for an order of possession.

The relationship between these two parties is an acrimonious one. Each party accused the other of lying and fraud during the hearing. At times, the parties were more concerned about yelling at each other than presenting their claim. Each party was cautioned numerous times.

Issues to be Decided

Is either party entitled to a monetary order as claimed?

Background and Evidence

The tenants gave the following testimony:

The tenants stated that the rent was 1450.00 per month and that utilities were to be in their name at the request of the landlord. The tenants stated that shortly after they moved in the

landlord rented the barn that is on the property, to several individuals who used it as a commercial mechanical repair shop. The tenants stated that the hydro bills went up markedly from about \$100.00 to \$700.00. The tenants realized that the barn and the main home that they were living in were on the same meter and that it was under the subject tenants' name. The tenant stated that she addressed this with the landlord and for the most part he covered the amount used by the "barn people". The tenants stated it was a stressful situation and that they incurred some costs because of it.

The tenants are applying for the following:

April-May Hydro Bill	\$531.22
Hydro Security Deposit	\$ 654.00
Lack of Hot Water	\$1400.00
Unable to do Equal Payments at Hydro	\$500.00
Stress of the Hydro Issue	\$ 1000.00
Filing Fee	\$ 50.00
Total:	\$4135.22

The landlord gave the following testimony:

The tenancy began on or about April 1, 2014 and ended on August 3, 2015. Rent in the amount of \$1450.00 is payable in two \$725.00 dollar installments on the first and fifteenth day of each month plus \$50.00 for utilities. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$200.00. The tenant failed to pay rent in the month(s) of May – August. The landlord stated that as of today's hearing the tenants owe him \$5520.00 in rent.

Analysis

Section 67 of the Act states that when a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. **To prove a loss the applicant must satisfy all four of the following four elements:**

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and

4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

It was explained in great detail to both parties that they must each bear the responsibility of proving their claim. When one party provides evidence of the facts in one way, and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

Firstly, I address the tenants' application and my findings as follows:

Tenants First Claim – April – May Hydro Bill of \$531.22. The landlord agrees with this amount. Based on that agreement I find that the tenants are entitled to \$531.22.

Tenants Second Claim - The tenants stated that because of the large hydro bills, the hydro company has imposed a \$654.00 "required security deposit" from them. The tenant submitted a bill from the hydro company imposing the security deposit but does not state as to why. It's unclear to me the reason that it has been imposed. In addition, the tenants stated that the deposit will be returned in one year and remains in trust with the company until then. The tenants have not satisfied me as to why this was imposed and further to that, any out of pocket costs as a result of the landlord. Based on the insufficient evidence before me, I dismiss this portion of the tenants' application.

Tenants Third Claim – The tenants are seeking \$1400.00 for being without hot water for 14 months. The landlord disputes this claim. The tenants did not submit any supporting documentation to corroborate their claim and I therefore dismiss this portion of the tenants' application.

Tenants Fourth Claim –The tenants are seeking \$500.00 for being unable to do the equal monthly billing plan. The tenant has not submitted any supporting documentation to corroborate that claim and I therefore dismiss this portion of the tenants' application.

Tenants Fifth Claim – The tenants are seeking \$1000.00 for stress and anxiety due to the hydro bills. The landlord said he was equally stressed in dealing with this situation. The tenants have not shown what steps they took to mitigate this matter, i.e. letters of complaint or filing for dispute resolution. The tenants only filed an application after they had already decided to move out. Based on the lack of evidence before me, I dismiss this portion of their application.

I address the landlords claim and my findings as follows

Landlords Claim - The landlord stated that the tenants didn't pay rent for four months. The tenants stated that they did not pay for six weeks. The landlord did not provide any rent ledgers, bank statements or receipt books to support his claim. In addition, the landlord submitted a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities that differed from the one the tenants

originally filed to dispute. The landlords' record keeping was spotty at best. I prefer and accept the testimony of the tenants that six weeks rent remains outstanding in the amount of \$2175.00 and award the landlord that amount.

As both parties have been awarded a monetary amount I apply the \$531.22 awarded to the tenants against the landlords' award of \$2175.00 for an amount owing to the landlord of \$1643.78.

As neither party was completely successful in their application I decline to make a finding in regards to the filing fee and each party must bear that cost.

As for the monetary order, I find that the landlord has established a claim for \$1643.78 in unpaid rent. I order that the landlord retain the \$200.00 security deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1443.78. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord is granted a monetary order for \$1443.78. The landlord may retain the security deposit.

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: August 12, 2015

Residential Tenancy Branch

