



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF, MND

Introduction

This hearing dealt with an application by the tenant for a monetary order. Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The tenant acknowledged receipt of the landlords' evidence. The tenant did not submit any evidence for this hearing. Both parties gave affirmed evidence.

Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

Background, Evidence

The tenants' testimony is as follows.

The tenancy began on August 1, 2014 and ended on December 31, 2014. The tenants were obligated to pay \$1650.00 per month in rent in advance and at the outset of the tenancy the tenants paid an \$825.00 security deposit, which was returned to the tenant. The tenant stated that she is seeking reimbursement for December's rent of \$1650.00 and utility costs of \$655.42 for November and December 2014. The tenant stated that the basement tenants caused her a lot of anxiety and grief.

The tenant stated that basement tenants were always yelling and fighting at all hours of the night that caused her to call the police on numerous occasions. The tenant stated that the basement tenants also smoked which bothered her and her child. The tenant stated that she made it clear to the landlord at move in that she did not want to move into a place with smokers for medical reasons. The tenant stated that she feared for her safety and the safety of her family as she was frightened by the violent and volatile behaviour of the basement tenants. The tenant stated that prior to them moving in her utility costs were much lower. The tenant stated that she did not like the fact that the landlord made her put the utility bills in her name for the entire house. The tenant stated

that she was so concerned about her safety and well-being that she was rarely there during the month of December. The tenant stated she shouldn't have to pay rent for not being there or someone else's utility bills.

The landlords' testimony is as follows:

The landlord stated that the tenant was "very dramatic" in her description of the events. The landlord stated that it was nowhere near as bad as she describes it. The landlord stated that she immediately addressed the issue of noise and smoke with the basement tenants by evicting the one that was causing the problems. The landlord stated that she dealt with it in accordance with the Act as quickly as she could but was still bound to the One Month Notice to End Tenancy for Cause provisions. The landlord stated that she only heard one complaint from the subject tenant and didn't hear about it again until she filed this application. The landlord stated that the tenant did not provide any documentation as to dates, times, or description of events to support her claim.

The landlord stated that she is willing to pay 1/3 of the utility claim as was agreed upon in their tenancy agreement and as was her offer from the start. The landlord stated she sent the tenant a text and offered several times to pay the appropriate amount of the utilities as agreed, only to be rejected by the tenant.

Analysis

As explained to the parties during the hearing, the onus or burden of proof is on the party making the claim. In this case, **the tenant** must prove 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. The tenant did not submit any documentary evidence to support her claim.

The tenant failed to provide any letters of complaints, police reports, dates and times of alleged incidences with the basement tenant or have any witnesses corroborate her story. In addition, the tenant failed to submit any copies of utility bills to support her position. Only due to the landlords forthright and open acknowledgement of the amount that I find that the tenant is entitled to 1/3 of the utility costs of \$655.42 for an amount of \$216.29. It's worth noting that the landlord provided a copy of the tenancy agreement that shows the subject tenant is responsible for 2/3 of the utilities.

As the tenant was not successful in this application and was awarded an amount based only on the landlords' acknowledgment, I decline to make a finding in regards to the filing fee and the tenant must bear that cost.

As for the monetary order, I find that the tenant is entitled to \$216.29. I grant the tenant an order under section 67 for the balance due of \$216.29. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The tenant is entitled to a monetary order of \$216.29.

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 13, 2015

Residential Tenancy Branch

