



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Ritson Lakeside Dev. Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF
 OLC, MNDC, O

Introduction

This hearing was convened by way of conference call concerning applications made by the landlords and by the tenant. The landlord company has applied for a monetary order for unpaid rent or utilities; for a monetary order for damage to the unit, site or property; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application. The tenant has applied as against the 2 named landlords for an order that the landlords comply with the *Act*, regulation or tenancy agreement and for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

The tenant and both named landlords attended the hearing, also representing the landlord company. The tenant was assisted by a Legal Advocate. One of the landlords and the tenant gave affirmed testimony, and the parties were given the opportunity to question each other with respect to the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for unpaid rent or utilities?
- Has the landlord established a monetary claim as against the tenant for damage to the unit, site or property?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?
- Has the tenant established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for overpayment of rent and utilities?
- Has the tenant established that the landlords should be ordered to comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

The tenant testified that this month-to-month tenancy began near the end of May, 2012 and ended near the end of October, 2014. Rent in the amount of \$750.00 per month was payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$375.00 which is still held in trust by the landlords, and no pet damage deposit was collected. The rental unit is a basement suite in a house, and the upper level is also rented. A copy of the tenancy agreement has been provided which specifies a month-to-month tenancy commencing June 1, 2012 for rent in the amount of \$750.00 per month which does not include electricity, heat or cablevision.

The tenant has provided a monetary order worksheet setting out the following claims:

- \$2,007.59 for propane;
- \$326.58 for telephone;
- \$117.19 for cable;
- \$710.85 for a hydro adjustment;
- \$4,350.00 for an extra rent charge; and
- \$200.00 for additional propane and heating charge.

The tenant's total monetary claim is \$7,712.21.

The tenant testified that the 2 rental units in the rental building shared the cost of hydro, propane, cablevision and internet even though the tenant's rental unit was a 2 bedroom suite and the upper unit was a 4 bedroom suite.

The landlords had provided a notice to the tenants in both units setting out costs for each of the utilities for 2013, and showing a calculation of \$375.00 per month. A copy has been provided and it shows the costs for utilities for 2013 were:

- \$3,700.12 propane;
- \$1,413.62 hydro;

- \$1,421.78 hydro adjustment;
- \$653.16 Telephone;
- \$818.17 Internet; and
- \$1,034.20 cablevision.

It also shows:

- \$9,036.97 total;
- Divided by 12 = \$753.08;
- Divided by 2 = \$376.54;
- Current cost \$250, new cost \$376.54;
- Difference \$126.54;
- New monthly cost \$375.00;
- Monthly rent \$750.00;
- New Utilities \$375.00;
- New total \$1,125.00;
- Effective May 1, 2014.

Heat is provided by propane and from September, 2013 until the end of the tenancy, the propane was cut off. The landlords had told the neighbouring tenants in the upper unit to turn it off, but the tenant continued to pay \$110.00 per month. The landlords had provided a space heater, and the tenant obtained 2 others.

The tenant testified that the amount of propane costs in the landlords' notice, divided by 2 units is \$1,503.56. The tenant was told what to pay every month which fluctuated, but has provided a document signed by the landlords stating that the utilities were \$252.00 per month prior to May 1, 2014.

The tenant further testified that the notice contained a charge for a telephone, which the tenant didn't use, and then the landlords deducted it from the calculations.

The tenant also testified that although the tenant had basic cable only, the neighbours in the upper level had prime cable, and the tenant paid for half. The tenant claims \$117.19 as an overpayment made to the landlords. The tenant referred to an email provided by the landlord to the tenant dated May 4, 2012 stating that the tenant's share of cable was \$38.64 per month, and the claim is the difference between that amount and the \$43.09 increase set out in the landlords' notice.

The tenant also testified that the landlord told the tenant that a hydro meter that was installed caused a hydro adjustment billing, and the tenant paid an additional \$710.85.

The tenant doesn't know what that adjustment was for, and claims that amount from the landlords.

The tenant also testified that at the beginning of the tenancy rent was to be \$600.00 per month. The tenant has paid \$750.00 per month, and claims reimbursement of \$4,350.00. Also, the tenant moved out of the rental unit in October and the landlord said that paying half a month was okay. The landlord was agreeable and gave the tenant a reference letter for a future landlord, and therefore the tenant ought not to pay more for October's rent. The tenant gave the landlord a cheque for \$500.00 but the landlord has not yet cashed it.

With respect to the landlord's claim, the tenant testified that the \$1,100.00 claim is for the utility increase that the tenant didn't pay. The tenant left the rental unit clean, and the landlord refused an offer to remove debris left by the tenant. The tenant agrees that a tab on the vacuum cleaner broke off, but it was an old machine and the landlords told the tenant they always buy items for the rental from a second-hand store. The tenant could have gone there to get one, but it wasn't on her mind at the time.

The landlord testified that the landlords named in the Tenant's Application for Dispute Resolution are not the landlords, and the landlord company named in the Landlord's Application for Dispute Resolution is the landlord.

The landlord further testified that the square footage of the 2 rental units is the same. The unit in the upper level has more bedrooms, but they are smaller than the bedrooms in the lower level.

The landlord denied that there was ever a conversation that rent would be \$600.00 per month and copies of emails exchanged between the parties have been provided dated April 10, 2012 setting out that rent would be \$750.00 per month for the use of both bedrooms.

The landlord agrees that the tenant notified the landlord in August, 2012 that she had her own phone and that's when the adjustment for utilities was made.

The propane was not cut off, and has never been cut off. The furnace is back in the corner of the lower level of the building and cannot be shut off unless both units are affected. The landlord tried to light the furnace and checked the tank. It was turned off at the tank, so the landlord turned it back on. The bill provided even shows that in order to prevent gas from leaking into the house, the tank has to be shut off if it's totally empty.

With respect to cable, the landlord testified that when a new tenant moved into the upper level, they paid extra for the improved cable box.

BC Hydro installed a Smart Meter, and advised the landlord that the adjustment was \$1,421.78. A copy of the billing has been provided, and it goes back one year. Each tenant is to pay half of the utilities, and half of that amount was \$710.89. The landlord also testified that there were never any issues about utilities until sometime in 2013, when the landlord told the tenant she could attend at the landlords' residence to see the bills, but the tenant refused.

From May, 2014 to present the tenant has never paid more than \$1,000.00 per month, and hand-written records have been provided by the landlord as well as a type-written chronology of events.

With respect to the tenant's testimony that a friend arrived to clean after the tenancy had ended, and to take items to the dump, the landlord testified that the gentleman was in his late 70s or early 80s. He showed up the day after the move-out to collect some items and the landlord did not feel comfortable with asking the gentleman to remove debris and make a dump run.

The landlord further testified that it took him and his wife 3 trips to the local land-fill with a pick-up truck to complete removing debris from the rental property. Further, the fridge, freezer, and stove were a mess. It took about 4 hours to clean the shower, and the landlord testified that it likely was never cleaned during the tenancy. A copy of an email from the tenant has been provided wherein the tenant apologizes for leaving a mess, and the landlord testified that the tenant told the landlords to use the security deposit for carpet cleaning and general cleaning.

The landlords were not aware that the tenant was moving but found out from another tenant. On August 4, 2014 the local mine closed, and renters became non-existent. New renters were secured on November 26, 2015 and the landlords had to re-rent at a lower rate.

The landlords claim unpaid rent and utilities for October in the amount of \$1,100.00, the cost of cleaning materials in the amount of \$167.99, and \$145.59 for replacement of the broken vacuum.

Analysis

Firstly, with respect to the tenant's claim for recovery of an overpayment of rent, the tenancy agreement is signed by a landlord and by the tenant and specifically states that

rent is \$750.00 per month. The landlord denies any conversation with the tenant about rent being \$600.00 per month, and has provided a copy of an email exchange between the parties in April, 2012, prior to the commencement of the tenancy stating that rent is \$750.00 per month plus utilities for use of both bedrooms. Therefore, I dismiss that portion of the tenant's application.

With respect to the landlord's claim for a monetary order for unpaid rent, the *Residential Tenancy Act* states that a tenant must give a landlord notice in writing the day before rent is payable under the tenancy agreement of the tenant's intention to vacate a rental unit. In this case, the tenant did not do so, and therefore the landlord is entitled to rent for October, 2014 in the amount of \$750.00.

With respect to the utilities, I have reviewed the evidentiary material provided by the parties. I find that the utilities in total increased from \$252.00 per month to \$375.00 per month effective May 1, 2014, and the tenancy ended October 31, 2014. Utilities are not included in the rent, and the landlord has provided copies of numerous bills and invoices for years, even well prior to the commencement of this tenancy. More importantly, the landlord provided the tenant with notice of the increase in utilities and broke it down into how the amounts were determined. The tenant did not pay the utilities for the month of October, 2014, and I find that the landlord has established a claim in the amount of \$347.79.

Both parties have applied for monetary compensation for damage or loss. In order to be successful, the onus is on each of the claiming parties to satisfy the 4-part test:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to mitigate, or reduce such damage or loss.

With respect to the landlord's claim for cleaning the rental unit, I have reviewed the emails and other documentation provided by the landlord, specifically the tenant's apology for leaving a mess. I am satisfied that the tenant failed to comply with the *Act* by failing leaving the rental unit reasonably clean and undamaged at the end of the tenancy. I find that the claim of \$167.99 is reasonable.

With respect to the landlord's claim for replacement of the vacuum cleaner, the tenant testified that a piece broke and it wasn't on her mind to replace it before departing. Therefore, I find that the tenant failed to comply with the *Act*, and the landlord had every

right to replace it at the tenant's expense, and the landlord has established a claim in the amount of \$145.59.

With respect to the tenant's claim, the tenant has made a claim against 2 individuals, while the tenancy agreement clearly states that the landlord is a company. I accept that the tenant dealt with the individual landlords, and the *Act* defines a landlord as:

- a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
 - (i) is entitled to possession of the rental unit, and
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this

Therefore, I find that the tenant's right to make a claim against the named landlords is not grounds for dismissing the tenant's application.

With respect to the tenant's claim for recovery of propane costs, I find that the tenant has failed to sufficiently prove that the landlords were responsible for turning off the propane, or that the landlords did anything contrary to the *Act* or the tenancy agreement.

With respect to an overpayment of telephone charges, the notice given by the landlords reduced the tenant's responsibility to pay the landlord for utilities by \$27.21 per month. The tenant does not dispute that, but has provided no evidence or testimony of when the adjustment took place or when the tenant got her own phone. The landlord testified that the adjustment was made to the utility billing in August, 2012. I am not satisfied that the tenant has established a claim for an overpayment of telephone charges.

With respect to the tenant's claim for an overpayment of cable, the landlord testified that the tenants in the upper unit paid for their own prime cable. I accept that testimony, in the absence of any evidence to the contrary, and I find that the tenant has failed to establish an overpayment of cablevision charges.

With respect to the \$710.85 charge to the tenant for a hydro adjustment, I find that had the utility been in the name of the tenant, BC Hydro would have charged that amount to the tenant. The landlord has provided a copy of the billing which is dated February 17, 2014, and testified that the demand for payment goes back a year. The tenant moved into the rental unit on June 1, 2012, and I find that the tenant is responsible for that charge.

I find no basis for the tenant's claim for additional propane and heating charges amounting to \$200.00. The tenant testified that space heaters were used in the rental unit for over a year, however I cannot find that the hydro bills increased justifying the claim.

With respect to the tenant's application for an order that the landlords comply with the *Act* or the tenancy agreement, I find no basis for the claim, and I dismiss it.

In summary, I find that the landlord has established a claim for unpaid rent for October, 2014 in the amount of \$750.00, \$347.79 for unpaid utilities, \$145.59 for replacing the vacuum cleaner, and \$167.99 for cleaning, for a total of \$1,411.37. Since the landlord has been successful with the application the landlord is also entitled to recovery of the \$100.00 filing fee.

The landlord has also applied for an order that the landlord be permitted to keep all or part of the security deposit. The landlord testified that he wasn't sure what happened to it, but believes the tenant agreed that the landlord should keep it for carpet cleaning. The *Act* requires a landlord to return a security deposit in full to a tenant within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing unless the tenant agrees otherwise in writing. If the landlord fails to return it or make an application for dispute resolution claiming against it within that 15 day period, the landlord must repay double the amount. In this case, there is no evidence that the tenant agreed that the landlord should keep it, or any evidence or testimony with respect to the landlord receiving the tenant's forwarding address in writing. The tenant's application for dispute resolution was served on the landlord, and filed on December 30, 2015. Assuming that the tenant served it by registered mail within 3 days, and given that documents served in that manner are deemed to be served 5 days later, I find that the landlord made the application for dispute resolution within the 15 day period. Therefore, having found that the landlord is owed \$1,511.37 I order the landlord to keep the \$375.00 security deposit in partial satisfaction of the claim, and I grant a monetary order in favour of the landlord for the difference of \$1,136.37.

Conclusion

For the reasons set out above, the tenant's claim is hereby dismissed in its entirety without leave to reapply.

I hereby order the landlord to keep the \$375.00 security deposit and I grant a monetary order in favour of the landlord company as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,136.37.

This order is final and binding and may be enforced.

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: March 04, 2016

Residential Tenancy Branch

