Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNR, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for unpaid rent or utilities, to retain the security deposit and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The landlord has claimed $400.00 to prepare for the hearing. An applicant can only recover damages for the direct costs of breaches of the Act or the tenancy agreement in claims under Section 67 of the Act. Costs incurred with respect to filing a claim are limited to the cost of the filing fee, which is specifically allowed under Section 72 of the Residential Tenancy Act. As a result, this portion of the claim is denied and the landlord is at liberty to write it off as a business expense.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of $1,580.00 for unpaid utilities?

May the landlord retain the security deposit in satisfaction of the claim?

Background and Evidence

The tenancy commenced on August 1, 2014 as a fixed term for one year. Rent was $3,800.00 due on the first day of each month. The landlord is holding a security deposit in the sum of $1,900.00. The tenancy ended on the last day of the fixed term, July 31, 2015, as required by the tenancy agreement.

The tenants then signed a one month agreement with the new owners of the home.

R.C. provided affirmed testimony that the tenants supplied their written forwarding address prior to the tenancy ending.

The tenancy agreement included term 2.c. requiring the tenant to pay:

"water (city utilities)".

There was no dispute that the landlord sent the tenants the city utility bills every three months, as they were issued by the city. During the tenancy the tenants paid the water portion of each bill, up to June 30, 2015.

The landlord said that the tenants were responsible for the complete metered utility statement. A copy of the July 1, 2014 statement showed the costs incurred for base residential water, metered water, base sewer, base drainage levy, metered sewer, quarterly waste, quarterly recycling and a meter fee.

The tenants said that when they signed the tenancy agreement they had agreed to pay the water costs. When they were asked to pay the full sum included on the utility statements they had asked the landlord for an explanation, as the request for payment was contrary to their understanding of the tenancy term. The landlord did not respond to the tenants' requests for information. In August 2015 the tenants paid for the water costs covering the three bills they had been given during the tenancy. The final bill for the last month of the tenancy has yet to be given to the tenants.

The landlord said he always signs the tenancy agreements in his office and fully explains the utility terms to tenants. The male tenant said that he met the landlord in a coffee shop to sign the agreement. The tenant would not have agreed to pay costs that he believes the owner should assume.

A copy of the bill for the last month of the tenancy was not supplied as evidence. A screen print from a city web site, supplied as evidence by the landlord was illegible.

The landlord supplied a copy of a cheque issued on July 31, 2015 in the sum of $258.93 for water owed from August 1 2014 to August 1, 2015. On July 20, 2015 the landlord emailed the tenants, attaching a copy of the utilities statement, requesting payment of $805.49; dating back to August 2014.

On August 24, 2015 the tenants emailed the landlord with a request for return of the security deposit. The landlord responded that the tenants must talk to the landlord about outstanding utility costs before the deposit could be returned.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party

making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act and proof that the party took all reasonable measures to mitigate their loss.

I have considered section 6 of the Act, in relation to the term requiring payment of water costs. Section 6(3) of the Act provides:

> *3) A term of a tenancy agreement is not enforceable if*
> *(a) the term is inconsistent with this Act or the regulations,*
> *(b) the term is unconscionable, or*
> *(c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.*

There was no dispute that the tenants were required to pay the water costs. The landlord believes that the term clearly imposes the cost of all city utilities. The tenants read the term to mean that city water costs were not included with the rent but that no other metered costs would fall to the tenants.

I find that the term, as written, fails to clearly express and communicate the obligations of the tenants; as set out by the landlord during the hearing. It is not unreasonable to accept that the term could be read as requiring the tenants to pay water, which is a city utility. All other costs such as electricity, gas, hot water, storage, whirlpool, to name a few, were listed on the tenancy agreement as items included or not included in the rent. The term excluding water costs from the rent appears to be a single service, in the same way that all other items listed, such as hot tub maintenance, gardening and gas. There is no indication that the service of water also required payments of numerous other city metered costs. I find that the failure to set out all of the utility costs in the same manner as all other items not included in rent leaves the water term vague and unenforceable for other utility costs such as sewer, waste, drainage levy, recycling and meter fees.

The landlord said that when he signs the tenancy agreement with tenants he explains the terms for utilities. I find that any need for explanation supports my finding that the term is not clearly expressed. If the landlord wishes to have tenants pay all costs for metered utilities then the term should set out that obligation unequivocally; listing each utility cost that the tenants must assume.

Pursuant to section 62(3) of the Act, I find, on the balance of probabilities that the term requiring payment of water, city utilities means that the tenants were required to pay the water costs and that other costs such as sewage , waste, recycling and the meter fee are not the responsibility of the tenants.

Therefore, I find that the claim is dismissed.

The landlord is at liberty to provide the tenants with a copy of the water bill for the last

portion of their tenancy.

Residential Tenancy Branch policy suggests that when a landlord applies to retain the deposit, any balance should be ordered returned to the tenant; I find this to be a reasonable stance. Therefore, I find that the tenants are entitled to return of the $1,900.00 security deposit.

Based on these determinations I grant the tenants a monetary Order in the sum of $1,900.00**.** In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The claim is dismissed.

The tenants are entitled to return of the security deposit.

This decision is final and binding and 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 30, 2016

Residential Tenancy Branch