



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 was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for unpaid rent or utilities, a monetary Order for money owed or compensation for damage or loss, to retain all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that the Application for Dispute Resolution, the Notice of Hearing and documents the Landlord submitted with the Application for Dispute Resolution were sent to the Tenant, via registered mail, although he cannot recall the date of service. The Tenant acknowledged receipt of the above documents and the evidence was accepted as evidence for these proceedings.

The Landlord stated that an Amendment to the Application for Dispute Resolution and documents the Landlord submitted with the Amendment were sent to the Tenant, via registered mail, although he cannot recall the date of service. The Tenant acknowledged receipt of the above documents and the evidence was accepted as evidence for these proceedings.

On December 02, 2016 the Tenant submitted 21 pages of evidence to the Residential Tenancy Branch. The Tenant stated that these documents were mailed to the Landlord on December 02, 2016. The Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

The parties were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Preliminary Matter

At the outset of the hearing the Landlord stated that the address of the rental unit is incorrectly recorded on the Application for Dispute Resolution. With the consent of both parties, the Application for Dispute Resolution was amended to reflect the correct address of the rental unit.

Issue(s) to be Decided

Is the Landlord entitled to a monetary Order for unpaid rent/ utilities and to keep all or part of the security deposit?

Background and Evidence

The Landlord and the Tenant agree that:

- the Tenant and two co-tenants, who are not named as respondents, entered into a fixed term tenancy agreement with the Landlord;
- the tenancy began on September 01, 2015;
- the fixed term of the tenancy ended on February 29, 2016;
- the tenancy agreement required the tenants to vacate at the end of the fixed term;
- the Landlord and the tenants subsequently agreed to continue the tenancy until April 30, 2016;
- the tenants agreed to pay \$1,730.00 in rent by the first day of each month;
- the tenants agreed to pay for hydro used during the tenancy;
- the tenants agreed to pay a security deposit of \$850.00, which has never been paid in full;
- one of the co-tenants did not pay his portion of the security deposit, which was \$283.00;
- a security deposit of \$567.00 was paid
- the tenants vacated the rental unit on April 19, 2016; and
- a forwarding address for the tenants was first provided, in writing, on June 06, 2016, via email.

On the Application for Dispute Resolution, which was submitted on June 20, 2016, the Landlord appears to be claiming \$2,987.00 in unpaid rent, which includes \$90.00 one of the tenants withheld for NSF fees.

In the Amendment to the Application for Dispute Resolution the Landlord reduced the amount of his total claim from \$3,931.92 to \$2,179.74, to reflect a payment of \$1,690.16 that he received from a sister of one of the co-tenants in August of 2016.

At the hearing the Landlord stated that he believes the tenants currently owe \$1,579.04, which includes \$90.00 one of the tenants withheld for NSF fees. The Landlord was unable to explain how he has calculated the amount of rent owing, although he was given several opportunities to do so. He stated that he was given several cheques that were returned due to insufficient funds but he was entirely unable to provide details about other payments that were made during the tenancy, as he has not maintained a concise record of payments that were made.

At the hearing the Tenant stated that he believes the tenants currently owe \$1,154.00, which includes \$90.00 one of the tenants withheld for NSF fees.

In an email submitted in evidence by the Tenant, dated June 28, 2016, the Landlord appears to be declaring that the tenants owe \$3,564.00 in unpaid rent, which includes \$90.00 one of the tenants withheld for NSF fees.

In an email submitted in evidence by the Tenant, dated June 04, 2016, the Landlord appears to be declaring that the tenants owe \$4,051.00 in unpaid rent, with no reference to the \$90.00 one of the tenants withheld for NSF fees.

In the Application for Dispute Resolution the Landlord makes reference to a \$90.00 NSF. In regards to this claim the Landlord and the Tenant agree that:

- one of the co-tenants withheld \$90.00 from a rent payment;
- the \$90.00 was withheld because the Landlord agreed to reduce the rent by \$157.00 to compensate the tenants for NSF fees they had incurred;
- the Landlord agreed to this rent reduction because he had delayed cashing some of the cheques he was given by the tenants, which contributed to the cheques being returned due to insufficient funds; and
- the amount the Tenant acknowledges is currently owed does not reflect the rent reduction of \$157.00.

The Landlord stated that the tenants currently owe \$600.70 for hydro consumption during the tenancy. The Tenant agrees that the tenants did not pay \$600.70 of the hydro charges incurred during the tenancy however he argues that the tenants should not be required to pay all of those costs.

In regards to the claim for hydro the Tenant stated that:

- when this tenancy began the tenants understood that the Landlord would be using the basement of the residential complex for storage purposes;
- in March and April of 2016 the Landlord was renovating the basement of the residential complex;
- during the renovations the Landlord was using power tools, fans, and electric heaters;
- the hydro bill for March and April was higher than the hydro bill for January and February of 2016; and
- he believes the hydro expenses should be reduced by \$350.00 in compensation for hydro used by the Landlord during the tenancy.
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In regards to the claim for hydro the Landlord stated that:

- when this tenancy began the tenants understood that the Landlord would be renovating in the basement of the residential complex;
- in February or March of 2016 he was renovating the basement of the residential complex;
- the renovations lasted approximately one month;
- during the renovations he used power tools, fans, and electric heaters; and

- he believes the hydro expenses should be reduced by \$75.00 in compensation for hydro used by the Landlord during the tenancy.

In an email submitted in evidence by the Tenant, dated May 07, 2016, the Landlord declared that he will pay \$150.00 of the “current” hydro bill in compensation for “electrical usage in the basement”.

Analysis

On the basis of the undisputed evidence I find that the Tenant and two co-tenants jointly agreed to pay the Landlord monthly rent of \$1,730.00. As the parties were co-tenants, the Landlord has the right to collect any outstanding rent/debts from one, or all, of the parties named on the tenancy agreement.

On the basis of the undisputed evidence I find that the Landlord agreed to reduce the rent by \$157.00 to compensate the tenants for NSF fees that were incurred. Although the Landlord was under no obligation to reduce the rent, I find that he did reduce the rent by \$157.00 and that the tenants are entitled to benefit from that rent reduction.

On the basis of the testimony of the Tenant I find that the tenants currently owe at least \$1,154.00 in rent. As tenants are required to pay rent when it is due, pursuant to section 26 of the *Act*, I find that the Tenant must pay this amount to the Landlord, less the aforementioned \$157.00 rent reduction.

There is a general legal principle that places the burden of proving a claim on the person who is claiming compensation. In these circumstances, the burden of proving that rent is owed rests with the Landlord and I find that the Landlord has submitted insufficient evidence to show that the tenants owe rent in excess of \$1,154.00.

In determining that the Landlord failed to establish that the tenants owe more than \$1,154.00 I was influenced, in part, by the Landlord’s inability to clearly articulate how he has calculated the amount of rent that is due.

In determining that the Landlord failed to establish that the tenants owe more than \$1,154.00 I was influenced, in part, by the absence of clear records that corroborate the Landlord’s testimony that \$1,579.04 is currently due.

In determining that the Landlord failed to establish that the tenants owe more than \$1,154.00 I was influenced, in part, by the fact that the Landlord has been inconsistent in the amount he has declared is due. In the email dated June 28, 2016 he appears to have declared that the tenants owe \$3,564.00 in unpaid rent; in the email dated June 04, 2016, he appears to have declared that the tenants owe \$4,051.00 in unpaid rent; and in the Application for Dispute Resolution submitted on June 20, 2016 he appears to have declared that the tenants owe \$2,987.00.

On the basis of the email dated May 07, 2016 I find that the Landlord agreed to pay \$150.00 of the hydro bill in compensation for hydro used while he was working in the basement. As the Landlord agreed to pay \$150.00 of the hydro bill I find that any amount currently owing for hydro must be reduced by \$150.00.

On the basis of the undisputed evidence I find that the tenants have not paid \$600.70 of the hydro costs incurred during the tenancy. I therefore find that the Tenant must pay this amount, less the \$150.00 the Landlord agreed to pay on May 07, 2016.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the cost of filing this Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of \$1,547.70, which includes \$997.00 in unpaid rent, \$450.70 in hydro costs, and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to keep the Tenant's security deposit of \$567.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$980.70. In the event the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of 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 *Act*.

Dated: December 15, 2016

Residential Tenancy Branch