



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing was convened in response to applications by the landlord and the tenant.

The landlord's application is seeking orders as follows:

1. For an order of possession;
2. For a monetary order for unpaid utilities;
3. To keep all or part of the security deposit; and
4. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities; and
2. To recover the cost of filing the application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Preliminary matter

At the outset of the hearing the parties agreed that the tenant vacated the rental unit on November 30, 2015. As a result, I find it not necessary to consider the landlord's application for an order of possession or the tenant's application to cancel a notice to end tenancy. Therefore, I dismiss this portion of their respective applications.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid utilities?

Is the landlord entitled to keep all or part of the security deposit?

Background and Evidence

The parties agreed that the tenancy began on April 1, 2014. Rent in the amount of \$1,900.00 was payable on the first of each month. The tenant paid a security deposit of \$1,000.00. The tenancy ended on November 30, 2015.

The landlord testified that as a term of the tenancy agreement the tenant is required to pay 50% of the utilities bills. The landlord stated that originally the utilities were in the tenant's name and they would pay the tenant their portion. The landlord stated from April 1, 2014 to September 26, 2014, there was an overpayment to the tenant in the amount of \$116.15.

The landlord testified that after September 26, 2014, they had the utilities placed in their name and the tenant was required to pay their portion of 50%, which the tenant has refused to pay. The landlord seeks to recover unpaid utilities in the amount of \$1,641.20.

The tenant testified that when they moved in to the main floor of the rental property, they had an agreement that the utilities would be split 50 – 50. The tenant stated the utilities were to be in their name as they would use the entire utilities bill and split it between their two companies as a tax benefit. The tenant stated the landlord did not have their consent to take the utilities out of their name.

The tenant testified that also in mid June 2014, the landlord informed they that they would be adding an additional rental unit and they were attempting to negotiate a new utility amount as there would be three units, which the landlord wanted a flat monthly rate of \$95.00 and they only wanted to pay \$60.00. the tenant stated new renters moved into the third unit on May 1, 2015.

The landlord agreed a new rental unit was created. The landlord stated the new unit was not ready until July 1, 2015. The landlord stated that they calculated the flat rate based on the existing bills.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

In this case, the tenant was required to pay 50% of the utilities under the terms of their tenancy agreement. Although the tenant originally had the accounts in their name, that is contrary to the Residential Tenancy Policy Guidelines and the landlord was correct to have the account placed in their name.

Further, the tenant was obligated to pay their portion of the said utilities until the third rental unit was created. The fact that they were using the entire bills as a tax benefit, which may be considered fraud, is not for me to consider. I find the tenant was obligated to pay their portion of utilities.

While the both parties have provided a different version on to when the new renter moved into the third rental unit, I find I must give the tenant the benefit as the landlord onus to prove their claim, such as providing a copy of the tenancy agreement with the new renter.

Therefore, I find the tenant is required to pay 50% of the utilities up to May 1, 2015 and a flat rate of \$60.00 from May 1, 2015 to November 30, 2015, as there is no way for me to determine any amount greater without evidence provided by the utility companies for the actual usage.

I find for the time period of April 1, 2014 to September 26, 2014, there was a balance owed by the tenant of **\$116.15**.

I further find for the hydro the tenant is required to pay the amount of **\$395.13**. The invoice from April to June 8, a daily average was used to determine the amount due to May 1, 2015.

I further find for the gas the tenant is required to pay the amount of **\$323.95**. The invoice from April 8 to May 7, a daily average was used to determine the amount due to May 1, 2015.

I further find for the months of May 2015 to November 30, 2015, the tenant is required to pay the flat rate of \$60.00 in the total amount of **\$420.00**.

I find that the landlord has established a total monetary claim of **\$1,305.23** comprised of the above described amounts and the \$50.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$1,000.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$305.23**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The tenant's application is dismissed.

The landlord is granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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: January 06, 2016

Residential Tenancy Branch