



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was scheduled to deal with a landlord's application for an Order of Possession for unpaid rent or utilities; and, a Monetary Order for unpaid utilities; losses related to cleaning and damage to the property; and, authorization to retain the security deposit and pet damage deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

The landlords had named two co-tenants in filing their application but only one tenant appeared at the hearing. I heard that the landlords had sent two hearing packages to both tenants in a single registered mail envelope. I also heard that the other co-tenant has not resided at the rental unit for several months. An applicant is required to serve each respondent with a hearing package. It is not sufficient to put two hearing packages in a single registered mail envelope and expect one tenant to serve the other tenant with the applicant's hearing package. I was unsatisfied that the male tenant was duly served with notification of this proceeding and I excluded him as a named party to this proceeding.

I determined that the landlords have already been provided an Order of Possession under a previous dispute resolution proceeding (file number provided on the cover page of this decision). Accordingly, the landlords do not require another Order of Possession and I do not provide one with this decision. As for returning possession of the property to the landlords, the parties mutually agreed during the hearing that they will meet at the property at 12:00 noon on April 28, 2017 for purposes of returning possession to the landlords and performing the move-out inspection together. I ordered both parties to fulfill this agreement.

At the outset of the hearing, the landlords requested that the monetary claim be amended to include utility charges that were incurred after filing their application. The

tenant did not object to the amendment request and confirmed that she was prepared to make arguments with respect to the landlords' claim for unpaid utilities against her. Since this hearing was scheduled to deal with unpaid utilities, and a number of weeks have passed since the landlords filed, I found it reasonable that the tenant would expect me to deal with utilities charges incurred since the landlords had filed and I permitted the application to be amended.

I noted that the landlords' monetary claim includes a request to retain the security deposit and pet damage deposit for additional cleaning and repair of damage that they anticipate they will have to perform. I found this portion of the landlords' claims to be premature as the tenant has not yet vacated the rental unit; the condition of the rental unit upon the tenant vacating has yet to be determined; and, the landlords have not yet established the amount of their loss for cleaning and damage, if any. Accordingly, I declined to further consider their claim for cleaning and damage and I dismissed this portion of their claim with leave to reapply.

In light all of the above, the remainder of this decision deals with the landlords' claim for unpaid utilities against the tenant, and the landlord's request to deduct such losses from the tenant's deposits.

It should be noted that neither party provided me with a copy of the written tenancy agreement even though I heard that each of them has a copy of it. Accordingly, I asked that each party read from relevant sections of the tenancy agreement during the hearing. I noted that the sections that were read to me by each party sounded consistent and I have made this decision based upon the parties' oral reading of the tenancy agreement.

Issue(s) to be Decided

Have the landlords established an entitlement to compensation for unpaid utilities in the amounts claimed, as amended?

Background and Evidence

The tenancy started in July 2015 and the tenants were required to pay rent of \$875.00 on the first day of every month. The tenancy agreement provides that rent does not include utilities. The residential property is a house with two living units. Both living units are occupied by tenants and the landlords reside in a different town. There is only one meter for hydro and one meter for gas at the property. The utility accounts are in

the name of the landlord. The tenancy agreement does not specify that the tenants are required to pay a certain percentage, portion or allocation of the utility bills.

The landlords testified that they collected a security deposit and a pet damage deposit from the tenants totalling \$875.00. The tenant testified that a security deposit of \$875.00 was paid and a pet damage deposit of \$400.00 was paid. The tenant stated that this was done in cash and that the co-tenant would have the receipt. I asked the tenant to read the section of the tenancy agreement that deals with payment of deposits. She stated that the tenancy agreement provides that the tenants were required to pay deposits in the total amount of \$875.00.

By way of this application, the landlords seek to recover 50% of the hydro and gas bills incurred for the period of March 2016 through to March 2017, as well as the water, sewer and garbage bills for the period of February 2016 through to January 2017, less two \$125.00 payments received in September 2016. The landlords' total claim for unpaid utilities is the sum of: \$742.16 as provided in writing by way of a letter dated January 31, 2017 and on the Monetary Order worksheet, plus \$450.34 added by way of the oral amendment during the hearing.

Both parties provided consistent testimony that the landlords had installed a "gizmo" in the rental unit with the intention of measuring the electricity consumed in the rental unit and that the gizmo was not used after a few months. The landlords attributed the cessation of the gizmo to the tenants unplugging it. The tenant attributed the cessation of the gizmo as being that it did not work properly, that the gizmo was complicated and the tenants were not shown how to read it, and the landlords removed it from their unit.

The landlord stated that the "gizmo" showed that the electricity consumed by the rental unit was slightly more than 50% but that the landlord requested and the male co-tenant agreed verbally that the tenants would pay 50% of the utilities. I heard that the landlords began requesting the tenants pay 50% of the hydro, gas, water, sewer and garbage bills. The male co-tenant paid the amounts requested by the landlords but then began falling behind and the last payment was made in September 2016. The female tenant who remained in the rental unit has not paid the landlord for any utilities.

The tenant responded by stating that the male co-tenant was fearful of being evicted and paid the amounts requested by the landlord without any challenge up until September 2016; however, after the male co-tenant moved out in September 2016 she requested to see copies of the utilities bills which were not provided to her. Rather, the only documentation concerning the utility charges she received was the landlord's letter of January 31, 2017. The tenant pointed out that the landlords could have written any

amount down in that letter since the amounts were not supported by a copy of the actual bills.

The tenant submitted that upon receiving the letter of January 31, 2017 is the first she learned that she was required to pay for gas at the property and she does not know what the gas is used for.

As for the hydro, the tenant assumed at the start of the tenancy that the tenants would have their own hydro account and that they would pay for hydro they actually consumed but that turned out to not be the case. The January 31, 2017 letter is the first she learned that the landlords seek to have the tenant pay 50% of the hydro bill. The tenant is of the position that the tenants did not agree to pay 50% and that 50% of the hydro bill is unreasonable considering the rental unit is approximately one-third of the size the upper living unit. The tenant submitted that for her previous two bedroom rental unit with electric heat she paid approximately \$65.00 per month for hydro.

The tenant was unaware that she had to pay for water and sewer as she thought that was a landlord responsibility. Further, she does not use the garbage disposal at the property as garbage is taken away by her support workers.

The landlord responded that gas fuels the hot water tank. The landlord also acknowledged that the upper unit is much larger than the rental unit with the upper unit being 1,200 to 1,300 square feet and the rental unit being 750 square feet. The landlord acknowledged that the tenant had voiced her opinion that the amount sought by the landlords was too high but the landlords denied that the tenant asked to see the actual utility bills. The landlord submitted that the amount charged by utility companies has increased significantly. The landlord stated that he had shown utility bills to the male tenant when requesting payment from him but that he has not seen the male tenant since July 2016.

The parties provided disputed verbal testimony as to how many people have been living in the rental unit and upper unit and how much cooking and electricity is consumed in each unit.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Since the landlords are the applicants in this case, the landlords bear the burden to prove their claim.

I accept that the tenants were required to pay for utilities in addition to rent based upon the undisputed terms of tenancy read to me during the hearing. This dispute; however, revolves around the allocation of the utility bills among the separate units and the amount payable to the landlords by the tenant.

The property does not have separate utility meters for each living unit. Where more than one unit is on a single meter, the parties may agree on a reasonable allocation of the utility bills. A reasonable allocation will be upheld so long as it is not unconscionable. Often an allocation is based upon size of the units and/or number of persons occupying the respective units. In this case, the tenancy agreement does not specify a percentage, portion or allocation of the utility bills to show that the parties had agreed upon a specific allocation of bills. Nor, was any subsequent agreement made between the landlord and the male co-tenant reduced to writing. However, I find it unnecessary to further consider whether the co-tenant's actions of paying 50% of the utility bills amounted to an agreement or whether a split of 50% is reasonable for the following reason.

Where a landlord seeks to collect utility charges from tenant, I find it reasonable to expect that the landlord would show or provide a copy of the utility bill to the tenant. If the utility bills were not provided to the tenant upon requesting payment I would expect that the bills be provided where a landlord makes a formal claim to recover unpaid utilities by way of an Application for Dispute Resolution. In this case, I was provided disputed testimony as to whether the tenant had requested a copy of the utility bills. In any event she was not provided a copy of the bills. Further, the landlords did not even provide a copy of the bills as evidence for this proceeding. I find the tenant raised a compelling point that she has no way to verify the accuracy of the amounts requested by the landlords and I find that in the absence of a copy of the utility bills I am unable to verify the accuracy of the claim either. Therefore, I deny the amounts claimed by the landlords due to a lack of sufficient evidence.

Despite finding the landlords failed to provide sufficient evidence to support their claim, rather than dismiss their claim entirely, I recognize that the tenant is obligated to pay for utilities consumed during the tenancy. Therefore, I award the landlords the amount the tenant submitted was a fair approximation of her hydro consumption which was \$65.00 per month.

Having heard the male co-tenant moved out in September 2016 and September 2016 is the last month the landlords received any payment for utilities, I am satisfied that the tenant owes utilities from October 2016 through to April 2017. Based on the tenant's own acknowledgement that \$65.00 per month is reasonable, I award the landlords \$455.00 (\$65.00 x 7 months) for these months.

I make no award for recovery of the filing fee.

I authorize the landlords to deduct \$455.00 from the tenant's security deposit and pet damage deposit in satisfaction of the awarded to the landlords with this decision. The balance of the deposits remain in trust, to be administered in accordance with section 38 of the Act.

Conclusion

The landlords have been awarded compensation of \$455.00 for utilities. The landlords have been authorized to deduct this amount from the tenant's security and pet damage deposit in satisfaction of this award. The balance of the deposits remains in trust to be administered in accordance with the Act.

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: April 26, 2017

Residential Tenancy Branch