



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenants: CNR MNDC RPP LRE FF
For the landlord: OPR MNR MNSD MNFC FF

Introduction

This hearing was convened as a result of the cross-applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”). The tenants applied to cancel a 10 Day Notice to End Tenancy dated February 1, 2017 (the “10 Day Notice”) for a monetary claim of \$1,075.00 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for the return of their personal property, to suspend or set conditions on the landlord’s right to enter the rental unit, for an order permitted the tenant or the tenant’s guests to access the rental unit, and to recover the cost of the filing fee. The landlords applied for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to retain the tenants’ security deposit, and to recover the cost of the filing fee.

The landlords, tenant R.K. (the “tenant”) and an agent for the tenant (the “agent”) attended the teleconference hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

Neither party raised concerns regarding the service of documentary evidence. I have reviewed all oral and documentary evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary and Procedural Matters

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenants indicated several matters of dispute on their Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy. I find that not all the claims on this

Application for Dispute Resolution are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenants' request to set aside the 10 Day Notice and the tenants' application to recover the cost of the filing fee and the landlords' application at this proceeding. The balance of the tenants' application is **dismissed, with leave to re-apply**.

Once the hearing began, the parties agreed that since filing their respective applications, the tenants vacated the rental unit on May 4, 2017, the day before the scheduled hearing on May 5, 2017. As a result, I find the 10 Day Notice to be moot as the tenants vacated the rental unit the day before the hearing and as a result, the tenancy ended on May 4, 2017. In addition, as the parties confirmed that the tenants had vacated the rental unit the day before the hearing, the landlords confirmed that they were no longer seeking an order of possession. As a result, I have not considered the landlords' original request for an order of possession as the tenancy ended on May 4, 2017.

Further to the above, I dismiss the tenants' application for an order to set limits or conditions on the landlord's right to enter the rental unit and to allow access to the rental unit for the tenant or the tenant's guests as both are now moot as the tenancy has ended and the tenants have vacated the rental unit.

Issues to be Decided

- Are the landlords entitled to a monetary order for unpaid rent or utilities or for money owed or compensation for damage or loss under the *Act*?
- What should happen to the tenants' security deposit under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on July 20, 2015. The parties agreed that the tenancy ended on May 4, 2017. The tenants paid a security deposit of \$350.00 at the start of the tenancy which has accrued no interest to date and which the landlords continue to hold.

The landlords have claimed a total amount of \$5,789.46 as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Unpaid rent (Nov-Dec 2016, and January to May 2017 = 7 months @ \$700.00 per month)	\$4,900.00
2. Total unpaid utilities	\$889.46
TOTAL	\$5,789.46

Regarding item 1, the landlord has claimed for seven months of unpaid rent comprised of November 2016 through to May 2017 inclusive at \$700.00 per month for a total of \$4,900.00 in

unpaid rent. Regarding November 2016 rent, a previous decision was referred to during the hearing, the file number of which has been included on the cover page of this decision for ease of reference. In that previous decision, the landlords had already claimed for November 2016 rent and had their claim dismissed without leave to reapply.

Regarding the remainder of the landlords' claim for unpaid rent, the tenant testified that he paid the landlords cash for every month but never received a receipt from the landlords. The landlords confirmed that they did not issue receipts as the tenants did not ask for one which I will deal with later in this decision. As a result of this conflicting testimony I asked the tenant when he paid rent in April and he could not recall the date. Furthermore, the tenants provided no proof such as banking account records to support that the amount of cash was withdrawn from their bank account each month.

Regarding item 2, the landlord has claimed \$889.46 for unpaid utilities and the tenant stated that he paid utilities also by cash and did not have any banking records to support that he withdrew cash to pay the utilities. The tenant provided no dates on which the utility payments were made. The landlords testified that \$889.46 remains owing but did admit that in the previous decision \$300.00 of unpaid utilities had already been dismissed and will not be considered in this decision due to the legal principle of res judicata described above. During the hearing, and due to the tenancy agreement indicating that the tenants were responsible for 40% of electrical utilities, the 40% tenants' portion of the utility bills the landlords agreed was actually \$445.06 in which if I deduct the \$300.00 already claimed and dismissed in the previous decision, the balance owing by the tenants would be \$145.06 plus \$444.64 for a total of \$589.70. The amount of \$589.70 was reached as follows:

Bill 1, 40% of \$360.91 bill = \$144.36 tenants' portion
Bill 2, 40% of \$751.15 bill = \$300.46 tenants' portion
Bill 3, 40% of \$1,111.60 bill = \$444.64 tenants' portion
Subtotal of tenants' portion of all 3 bills = \$889.46
Less \$300.00 portion already dismissed in previous decision = \$589.46

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

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 sections 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 what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is the landlords to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the tenants. Once that has been established, the landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the landlords did what was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Item 1 – Firstly, I will address the landlords' claim for rent for November 2016. The parties were informed during the hearing, that I cannot re-hear and change or vary a matter already heard and decided upon as I am bound by the earlier decision, under the legal principle of *res judicata*. Res judicata is a rule in law that a final decision, determined by an Officer with proper jurisdiction and made on the merits of the claim, is conclusive as to the rights of the parties and constitutes an absolute bar to a subsequent Application involving the same claim.

With respect to *res judicata*, the courts have found that:

“...the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of *res judicata* applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time.”

Mr. Justice Hall of the Supreme Court of British Columbia, in the case *Leonard Alfred Gamache and Vey Gamache v. Mark Megyesi and Century 21 Bob Sutton Realty Ltd.*, Prince George Registry, Docket No. 28394 dated 15 November, 1996, quoted with approval the above passage from the judgement of *Henderson v. Henderson*, (1843), 67 E.R. 313.

In light of the above, I am unable to hear a claim for November 2016 rent and will only consider the landlords' claim for December 2016 through to May 2017 inclusive. After not considering November 2016 rent for the reason stated above, I find the balance of the landlords' claim for

unpaid rent totals \$4,200.00 comprised of six months of unpaid rent for the months of December 2016 to May 2017 inclusive. While I find the landlords breached section 26(2) of the *Act* which requires that landlords provide tenants with receipts for all rent payments made in cash, I find the tenant's testimony to be vague and not credible. Furthermore, I find the tenants provided no documentary evidence such as banking records to support that they withdrew cash from their accounts to pay six months of rent and that I prefer the testimony of the landlords over that of the tenant. Given the above, I find the tenants breached section 26 by not paying rent as claimed by the landlords and owe **\$4,200.00** in unpaid rent as a result.

Item 2 – Consistent with my finding above, I find the tenant's testimony regarding utility payments being paid in cash to be vague and not credible. I note that the tenants failed to provide any supporting documentary evidence such as bank statements that they withdrew that amount of cash from the bank to pay for their portion of utilities. As a result, I prefer the testimony of the landlords over that of the tenants as the landlords' testimony was consistent and believable. Therefore, I find landlords have met the burden of proof and have proven a monetary claim of **\$589.46** as described above for the tenants' portion of unpaid utilities.

As the landlords' Application had merit, I grant the landlords the recovery of the cost of the filing fee in the amount of **\$100.00** pursuant to section 72 of the *Act*.

Given the above, I find the landlords have established a total monetary claim of **\$4,889.46** comprised of \$4,200.00 in unpaid rent, \$589.46 in unpaid utilities, and the recovery of the cost of the \$100.00 filing fee. As the landlords continue to hold the tenants' security deposit of \$350.00, I authorize the landlords to retain the tenants' full security deposit of \$350.00 in partial satisfaction of the landlords' monetary claim. I grant the landlords a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenants to the landlords in the amount of **\$4,539.46**.

I do not grant the tenants the recovery of the cost of the filing fee.

I caution the landlords to comply with section 26(2) of the *Act* in the future by providing a receipt for all rent payments made in cash.

Conclusion

The landlords' Application has merit.

The landlords have established a total monetary claim of \$4,889.46 as described above. The landlords have been authorized to retain the tenants' full security deposit of \$350.00 in partial satisfaction of the landlords' monetary claim pursuant to section 72 of the *Act*. The landlords are granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenants to the landlords in the amount of \$4,539.46. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, 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: May 23, 2017

Residential Tenancy Branch