



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing convened as a result of Landlord's Application for Dispute Resolution wherein the Landlord requested monetary compensation for damage to the rental unit and money owed, authority to retain the Tenant's security deposit and to recover the filing fee.

The hearing was conducted by teleconference on June 13, 2017. Both parties called into the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant?
2. What should happen with the Tenant's security deposit?
3. Should the Landlord recover the filing fee?

Background and Evidence

The Landlord testified that the tenancy began September 17, 2015. Monthly rent was payable in the amount of \$700.00 and a security deposit in the amount of \$350.00. A copy of the residential tenancy agreement was also provided in evidence.

The tenancy ended February 29, 2016.

The Landlord testified that he received the Tenant's forwarding address on January 31, 2017 as per the Decision of Arbitrator Bell on January 30, 2017.

The Landlord testified that the Tenant damaged an electrical outlet in the rental unit and that he did the repair himself. He stated that he is a carpenter and does home renovation for a living. He confirmed that the amount he charged, \$75.00, is his standard charge for such work.

The Landlord also sought compensation for the electrical utility charge in the amount of \$183.62 for the November to December 2015 billing period and \$126.08 for the January and February 2016 billing period.

The following provisions of the tenancy agreement deal with the electrical utility charge.

3. TENANT (please fill in the information in the spaces provided)

a) **Payment of Rent:**
 The tenant will pay the rent of \$ 700.00 each (check one) ☐ day ☐ week ☒ month to the landlord on the first day of the rental period which falls on the (due date, e.g., 1st, 2nd, 3rd, 31st) 1st day of each (check one) ☐ day ☐ week ☒ month subject to rent increases given in accordance with the RTA.

The tenant must pay the rent on time. If the rent is late, the landlord may issue a Notice to End Tenancy to the tenant, which may take effect not earlier than 10 days after the date the notice is given.

b) **What is included in the rent:** (Check only those that are included and provide additional information, if needed.)
 The landlord must not terminate, or restrict a service or facility that is essential to the tenant's use of the rental unit as living accommodation, or that is a material term of the tenancy agreement.

<input checked="" type="checkbox"/> Water	<input checked="" type="checkbox"/> Stove and Oven	<input type="checkbox"/> Window Coverings	<input type="checkbox"/> Storage
<input checked="" type="checkbox"/> Electricity	<input type="checkbox"/> Dishwasher	<input type="checkbox"/> Cablevision	<input type="checkbox"/> Garbage Collection
<input checked="" type="checkbox"/> Heat	<input checked="" type="checkbox"/> Refrigerator	<input type="checkbox"/> Laundry (free)	<input checked="" type="checkbox"/> Parking for <u>1</u> vehicle(s)
<input type="checkbox"/> Furniture	<input checked="" type="checkbox"/> Carpets	<input type="checkbox"/> Sheets and Towels	<input checked="" type="checkbox"/> Other: <u>SINCE ATTACHED GARAGE</u>

☒ Additional Information: ELECTRICITY WILL BE INCLUDED UNTIL SUCH TIME AS DEMANDS WARRANT EXCLUSION

The Landlord testified that when the tenancy agreement was entered into, he discussed with the Tenant that as long as the electrical utility charges remained "reasonable" that he would not expect the Tenant to pay anything towards this account. He further stated that he told the Tenant that if the charges were "outrageous" he would expect the Tenant to pay 1/3. He testified that the Tenant agreed to this and signed the agreement.

The Landlord further testified that the electrical utility for September and October 2016 was "fine", but then he went from a \$200.00 credit position to a \$500.00 charge on the November and December 2016 account. He stated that when he brought this to the Tenant's attention the Tenant stated that he expected the charges were related to the work he was doing in his shop. The Landlord further stated that the Tenant said he didn't have any money at the time and that

he wanted the Landlord to take the money from his security deposit. The Landlord claimed that this was an oral agreement.

In the materials was an email from the Tenant to the Landlord dated May 7, 2016 wherein the Tenant asked for return of his security deposit. In response the Landlord wrote that the Tenant agreed to pay 1/3 of the hydro bill, and that the Tenant had damaged an electrical receptacle. The Landlord submitted that this was evidence of their agreement as the Tenant failed to dispute the Landlord's claim that such an agreement existed.

The Tenant testified as follows.

In response to the Landlord's claim for \$75.00 for the replacement of the electrical receptacle the Tenant confirmed that the receptacle was damaged while he was there, but stated that he believed the problem was the internal wiring, not his heater, as his heater worked fine after the receptacle burned out. Further, he stated that the amount charged was for the Landlord's services, and the invoice lacks sufficient detail and was written a year after the tenancy ended. Finally he stated that the Landlord is not a licensed electrician and that in all the circumstances he opposed paying this amount.

In response to the Landlord's claim for a contribution to the electrical utility the Tenant stated that as per the tenancy agreement, electricity was included in his rental payment. He also testified that they did not discuss any contribution to the electrical utility at the time they signed the tenancy agreement. The Tenant confirmed that the Landlord spoke to him about the increased costs at some point during the tenancy, but that all the Tenant said in response was that he was busy, and they could discuss this further at another time.

The Tenant further noted that he requested his security deposit and at that time the Landlord replied by email on March 15, 2016 as follows:

"Hi [Tenant's name withheld]

I am waiting for some money for a job I'm doing. Give me a couple of days to sort it out.
Thanks,
[Landlord's name]"

The Tenant stated that their relationship was amicable until he asked for return of his deposit.

The Tenant further testified that the Landlord did not complete a move in or move out condition inspection. He stated that at the end of the tenancy he wanted to do a "walk around" and the Landlord simply stood in the room and said: "everything looks great".

The Tenant also noted that the electrical utility account was not in the Landlord's name.

In reply the Landlord testified as follows:

At the time the electrical utility was rendered the account was in the Landlord's father's name.

The Landlord confirmed that he did not do a formal move in condition inspection, nor did he do a move out inspection. He confirmed that he "probably didn't do a thorough walk around".

Analysis

After consideration of the testimony, evidence and submissions of the parties, and on a balance of probabilities, I find as follows.

In a claim for damage or loss under section 67 of the *Act* or the 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 his claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party 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.

The condition in which a Tenant should leave the rental unit at the end of the tenancy is defined in section 37 of the *Act* as follows:

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

I find the Landlord has failed to prove the Tenant damaged the electrical plug in contravention of section 37 of the *Act*. I accept the Tenant's evidence that his electrical appliance continued to work after the plug burned out; and I therefore find it likely that any issue with the plug was a result of internal wiring, not any actions or neglect on the Tenant's part. I therefore dismiss the Landlord's claim for related compensation.

Further, I find, pursuant to the residential tenancy agreement, and in particular the portions reproduced earlier in this my Decision, that the electrical utility was included in the rental payments.

The Landlord claims that he had discussions with the Tenant at the time the agreement was signed, and that those discussions culminated in an oral agreement that the electrical utility would be included in the rent provided the charges were “reasonable”, but that the Tenant would pay more towards the electrical utility when these charges became “outrageous”. The Tenant denies any such agreement was reached with respect to the electrical utility charges and relies on the strict terms of the tenancy agreement.

Pursuant to section 13(1) of the *Residential Tenancy Act*, it is the Landlord’s responsibility to prepare a written agreement. Had the Landlord wished to include a clause in the agreement which had the effect of creating an obligation for the Tenant to pay towards the electrical utility once the charges reached a certain amount, the Landlord could have included this clause in the agreement.

However, I point out that even in the event the Landlord had included such a clause in the tenancy agreement before me, I find his stated parameters of “reasonable” and “outrageous” with respect to the electrical utility charges to be too vague to be enforceable.

A residential tenancy agreement is a contract. The *contra proferentem* rule provides that where there is ambiguity in the interpretation of a clause in a contract, this ambiguity will be construed against the person who drafted the contract. In this case it is the Landlord who prepared the written tenancy agreement, and as such any ambiguity about the Tenant’s obligation to pay towards the utilities (again, had such a clause been included in the agreement) would be interpreted in favour of the Tenant.

I find, based on the evidence before me that the Landlord has failed to prove the Tenant is responsible for paying any amount towards the utilities. And for the above reasons, I dismiss the Landlord’s claim for compensation for unpaid utilities.

The Landlord seeks to retain the Tenant’s security deposit of \$350.00. As the Landlord’s claim has been dismissed in its entirety, his request to retain the deposit is similarly dismissed.

Having been unsuccessful in his claims, the Landlord is not entitled to recover the filing fee.

Conclusion

The Landlord’s claim for compensation for damage to the rental unit, unpaid utilities, and recovery of the filing fee is dismissed.

The Landlord shall return the Tenant’s deposit of **\$350.00**. To facilitate its return I grant the Tenant a Monetary Order in the amount of **\$350.00**. This Order must be served on the Landlord and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

Should the Landlord fail to do so within 15 days of the date of receipt of this my Decision, the Tenant shall be at liberty to apply for return of double the deposit.

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: June 28, 2017

Residential Tenancy Branch