



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, SS, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order and an order for substituted service. I note the order for substituted service was adjudicated in a decision dated November 7, 2016 by way of an *ex parte* proceeding.

The hearing was conducted via teleconference and was attended by the landlord and the tenant.

During the hearing the landlord referred to a spread sheet explaining his claim, however, a copy was not with the landlord's file. The tenant confirmed that she had a copy of the spreadsheet. As such, I allowed the landlord to fax the decision to me after the hearing.

I note when the landlord submitted his spreadsheet he indicated that his original spreadsheet contained a formula error in calculating hydro and gas utility costs and he has now corrected the error. I note that the correction has reduced the landlord's total claim from \$11,642.31 to \$11,370.81, as such I find no prejudice to the tenant, in accepting the corrected spreadsheet.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent and utilities and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agreed the tenancy began in May 2014 on a month to month basis for a monthly rent of \$650.00. The parties agreed there was not a set date for the payment of rent each month and that the utilities were to be paid to the landlord.

The landlord's spreadsheet indicates that throughout the course of the tenancy the tenant failed to pay rent in the full amount for several months. The landlord submits the tenant owes \$7,510.00 in unpaid rent; \$2,239.25 in gas utility charges; and \$1,619.56 for hydro charges.

The tenant agrees she owes the landlord some money for rent and utilities but she believes the amount is more in the "couple of thousand dollar range". The tenant stated that her bank statements could confirm what rent was paid and what wasn't, however the tenant did not provide any bank statements.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

There is a general legal principle that places the burden of proving a loss on the person who is claiming compensation for the loss. In regard to the landlord's claim for rent in the amount of \$7,510.00 and considering the tenant's testimony that she owes the landlord some rent but not the amount claim, the burden of proving that rent was not paid, rests with the landlord.

Section 26(2) of the *Act* stipulates that a landlord must provide a receipt when rent is paid by cash. Cash receipts can help to establish when a rent payment has *not* been made.

When a landlord regularly provides receipts for cash payments there is an expectation that a tenant will be able to produce a receipt for every cash payment that has allegedly been made. When a tenant is unable to provide a receipt for an alleged payment, it lends credibility to a landlord's claim that a cash payment has not been made.

When a tenant has previously made cash payments and has never been provided with a receipt, there is no expectation that the tenant can provide a receipt for such a payment. However, in the case before me the tenant testified that her bank statements could prove which payments were not made, but she failed to provide these statements.

In these circumstances the landlord's failure to provide receipts for cash payments made during this tenancy can significantly impair his ability to prove that the tenant did not pay a portion of rent. The landlord did, however, submit other evidence in the form of his spreadsheet which is in essence copy of a payment ledger, to corroborate his claim that the tenant did not pay the amounts claimed.

In the absence of any other documentary evidence to the contrary, I find the landlord has established the tenant has failed to pay rent in the amount of \$6,860.00 over the course of the tenancy.

As to the landlord's claim for utility charges, including gas and hydro, I find the landlord's spreadsheet provides a similar record of the charges and non-payment of utilities as claimed by the landlord in the amounts claimed. I find the tenant has provided no evidence to support any payment of utilities during the course of the tenancy. I find the landlord has established entitlement to \$2,239.25 for gas utilities and \$1,619.56 for hydro.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$11,468.81** comprised of \$7,510.00 rent owed; \$2,239.25 gas utility; \$1,619.56 hydro and the \$100.00 fee paid by the landlord for this application.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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 *Residential Tenancy Act*.

Dated: June 07, 2017

Residential Tenancy Branch