



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Code MNR, MND, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for unpaid rent and utilities, for damages to the unit and to recover the filing fee from the tenant.

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.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

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

Background and Evidence

The tenancy began on February 1, 2016. Rent in the amount of \$800.00 was payable on the first of each month. The tenant paid a security deposit of \$400.00. The tenancy ended on May 1, 2017.

The landlord claims as follows:

a.	Unpaid rent for May 2016	\$800.00
b.	Unpaid utilities	\$368.00
c.	Drywall repair	\$100.00
d.	Filing fee	\$100.00
	Total claimed	\$1,368.00

Unpaid rent for May 2016

The landlord testified that the tenant did not give proper notice to end the tenancy. The landlord seeks to recover unpaid rent in the amount of \$800.00.

The tenant testified that they were given notice to end tenancy with an effective date of May 10, 2017. The tenant stated they did not give the landlord any notice that they would be vacating earlier.

Unpaid utilities

The landlord testified that the tenant was required to pay $\frac{1}{2}$ of the utilities and $\frac{1}{3}$ of the gas. The landlord stated that the tenant never paid their portion. The landlord seeks to recover the amount of \$386.00. Filed in evidence is a letter from DP and utility invoices.

The tenant testified that when they were negotiating the terms of their tenancy they were informed that the tenant was required to pay $\frac{1}{2}$ of the utilities and $\frac{1}{3}$ of the gas. The tenant stated that they were informed by the landlord's agent that if they felt that amount was not fair they could be discussed with the landlord. The tenant stated that they never did discuss the issue with the landlord; therefore, they are not responsible to pay for utilities.

Drywall damage

The landlord testified that the tenant caused damage to the drywall. The landlord stated a move-in condition inspection was not completed and they were not there when their agent did the walk thru.

The tenant testified that the damage to the drywall was pre-existing.

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.

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.

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.

Unpaid rent for May 2016

Section 26 of the Residential Tenancy Act states:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

In this case, the tenant was served with a notice to end tenancy issued on April 17, 2017, with an effective date of May 10, 2017. The tenant did not inform the landlord that they accepted the notice or that they were moving out earlier than the effective date in the notice.

When a tenant is served with a notice to end tenancy pursuant to section 46 of the Act, there is no authority for the tenant to end the tenancy earlier than stated in the notice. As rent was due on the first of the month, I find the tenant was responsible to pay rent. I find the tenant breached the Act and the landlord suffered a loss. Therefore, I find the landlord is entitled to recover unpaid rent in the amount of **\$800.00**.

Unpaid utilities

In this case, the tenant was informed at the start of the tenancy that they were required to pay ½ of the utilities and 1/3 of the gas. The landlord's agent informed the tenant that the tenant could discuss this with the landlord if they felt that amount was unfair. However, that discussion never occurred. I find the tenant's position unreasonable not to pay utilities, as there was no negotiated amount other than the amount original stated, I find the tenant is responsible to pay ½ the utilities and 1/3 of the gas.

I have reviewed the utility invoice for the month of February and the total amount for that month was \$213.24. I find the tenant's portion of ½ is the amount of \$106.62, as this for one month, that amount is multiplied by the three months that they were living there for the total amount of \$319.86. The hydro bill for the period of February 10 to March 27, 2017, was the amount of \$121.34, the tenant's portion was ½ for a total amount of \$60.67, and the gas bill with the tenant is required to pay 1/3 for February 10, 2017 was the amount of \$239.30 the tenant's portion was 1/3 for a total amount of \$79.76. The total amount calculated is \$460.26. As I have calculated an amount greater than the landlord was seeking in their application, I find the landlord is limited to the amount

claimed. Therefore, I find the landlord is entitled to recover the cost of utilities and gas in the amount of **\$368.00**.

Drywall damage

I find the landlord has failed to provide sufficient evidence to support the tenant caused damage to the drywall. No move-in inspection was completed; the landlord was not at the rental unit when the tenancy started. Therefore, I dismiss this portion of the landlord's claim.

I find that the landlord has established a total monetary claim of **\$1,268.00** comprised of the above described amounts and the \$100.00 fee paid for this application.

I further find it appropriate to offset the amount owed with the tenant's security deposit. I order that the landlord retain the security deposit **\$400.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$868.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The landlord is granted a monetary 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: June 29, 2017

Residential Tenancy Branch