



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR FF

Introduction:

Both parties attended the hearing and gave sworn testimony. The landlord said the Application for Dispute Resolution was served by registered mail and the tenant agreed receipt of it. I find that the tenant was legally served according to section 89 of the Act. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 46 and 67 for unpaid utilities; and
- d) An order to recover the filing fee pursuant to Section 72.

Issue(s) to be Decided:

Is the landlord entitled to a Monetary Order for unpaid utilities and filing fee?

Background and Evidence:

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the tenancy commenced August 1, 2009 and ended May 31, 2016. In a previous hearing, the landlord claimed the tenant had not paid her share of the utilities from October 2015 to the end of the tenancy in May 2016. The tenant said she had paid and had cheques to prove this but she agreed she had not paid utilities for the last month of the tenancy. In that hearing, the landlord did not file a copy of the utility bills for the last month of the tenancy and was unable to provide information on the amount owed. Since there was insufficient documentary evidence, his claim was dismissed with leave to reapply.

He claims unpaid utility bills in this Application of \$1091.90 for bills for electric from May 31, 2011 to August 15, 2015 and for gas from Jan. 15, 2011 to May 31, 2016. He claims 1.5% interest for late payments of these bills plus \$22.68 for registered mail costs and \$100 for supplies and labour for the Application.

The landlord submitted some spread sheets and a print out of amounts from the gas and electric companies. The tenant objected to these spread sheets and said she was entitled to see original bills so she knew of extra charges due to the landlord paying his bills late. It is undisputed that the landlord's son was living in the other suite and he and the tenant were to share the utility bills equally. The parties alleged that the previous decision said they had to provide copies of original utility bills to prove costs and copies of cheques to prove payment. In her evidence, the tenant provided copies of the original bills from the electric and gas companies together with notes referring to the copies of cheques with which she had paid them. Her cheques were clearly numbered and the landlord did not dispute that any of the cheques were not valid.

I found the landlord's spread sheet difficult to understand and told him I preferred to deal with the original bills and proved payments as this was the best evidence available. The parties and I went through the bills and cheques together and they were given the opportunity to comment. The landlord continually referred to a 'credit' from the gas company and the fact that the tenant had taken it off when she paid the electric bill. The tenant said she paid both bills together to the landlord's son and the allocation was up to him. She said she always paid on time. The tenant did agree she owed payments for gas for the last 3 months of her tenancy. Equal payments of \$59 were to be made each month and she made none for March, April or May 2016 because she said she never got the bills. She agreed the summary from the gas company is reliable. She objects to relying on the Electric billing history for the company's printout states it may not be a reflection of the billing and their invoices provide the most current, verified data available. She said the landlord could have obtained a copy of the actual invoices for any months he claims and he did not. The summary shows a bill for \$533.27 on February 17, 2016 and \$368.63 on April 2016 and \$210.59 for reading on June 16, 2016. The landlord said he pro rated the last bill to \$78.07 owing as the tenant left at the end of May. The tenant said she concurred she owed the last bill but said she never saw a bill or what unknown charges may have been included in either the April 19, 2016 or the June 16, 2016 dates. The landlord said he submitted the spread sheet to the tenant showing amounts owed and invited her to show the number of the cheque by which it was paid. A spread sheet of the tenant shows amounts and cheque numbers.

In evidence are gas and electric bills provided by the tenant, spread sheets provided by the landlord and tenant and statements of the parties. On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

The onus is on the landlord as applicant to prove his claim on a balance of probabilities. I found the evidence to be disconnected and hard to understand. The landlord admitted

it was a bit of a 'hodge podge'. He relied on the Invoices provided by the tenant for the gas and electric bills so we examined them together. I find the weight of the evidence is that the tenant paid her utility bills by cheque and they corresponded to the amounts on the invoices. I find insufficient evidence to prove that she paid her bills late as the landlord alleged so I find her not responsible for late charges. I find the fact that she combined payments of the utilities depending on when bills were presented was reasonable and her cheque payments correlated exactly with the amounts for which she was responsible. I dismiss the landlord's claim for late payment charges.

Although the landlord contended that she should not have deducted a gas bill credit off her payment for an electric bill, I find she was paying the bills at the same time on the same cheque and the allocation was up to the landlord's son who was paying both bills. I find this is not a debt owed by the tenant. I find the tenant even realized she made a calculation error on a gas bill for November 2016 related to the credit and wrote a cheque to cover the difference. I found the records and testimony of the tenant to be credible and reliable and well supported by her records.

However, she honestly did agree she owed some utilities for the last months of her tenancy and would have paid if she received the invoices. I find the gas summary of charges in evidence sufficiently reliable so I find her liable to pay \$59 (half of \$118 equal payment) for each of March and April 2016) and \$67.50 for May 2016. Regarding electric charges, I find the weight of the evidence is that she paid her portion of the electric bills up to billing date February 19, 2016. Being on a two month billing cycle, the next bill was recorded on the landlord's billing history as April 19, 2016 for \$368.63. I find this correlates well with the charges on the previous bill which she paid which did not include any late or other penalty charges. Therefore, I find her liable to pay 50% of this bill or a total of \$184.31. I decline to rely on some calculation of the landlord's for the reading date of June 16, 2016 since he provided no invoice in evidence to verify his calculations.

In respect to the landlord's claim for processing the application and registration fees, I find my jurisdiction is limited to the recovery of the filing fee so I dismiss this portion of his claim. As stated above, I find insufficient evidence that the tenant was late in paying her utilities. It is equally probable that the landlord's son delayed in presenting the bills. I dismiss his claim for late payments of utilities.

Although it is understandable that the tenant believes the landlord should have provided all the invoices, I find the previous decision just noted that no **documentary** [emphasis mine] evidence of utilities was provided. I find sufficient documentary evidence to support the portion of the landlord's claim outlined above.

Based on the evidence of the parties, I find this dispute might have been avoided if the landlord or his son had provided invoices for utilities for the last months of the tenancy so I have limited recovery of the filing fee to 50%.

Conclusion:

I find the landlord is entitled to a monetary order as calculated below. I find the landlord is entitled to recover only \$50 filing fees due to his limited success.

Calculation of Monetary Award:

Gas utility owed (59x2+67.50)	185.50
Electric utility owed	184.31
Filing fee	50.00
Total Monetary Order to Landlord	419.81

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