



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MNR, FF
Tenant: MNR, MNDC, O

Introduction

This hearing dealt with cross Applications for Dispute Resolution with both parties seeking monetary orders.

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

At the outset of the hearing the landlord amended the amount of his claim to exclude the claim of \$275.13 for March 2017 use and occupancy. As this amendment reduces the total amount of the landlord's claim from \$3,075.13 to \$2,800.00 I find there is no prejudice the tenant and I accept the amendment.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent and late fees and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 26, 67, and 72 of the *Residential Tenancy Act (Act)*.

It also must be decided if the tenant is entitled to a monetary order for the cost of emergency repairs; and the return of a portion of hydro and gas utilities and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 33, 67, and 72 of the *Act*.

Background and Evidence

The tenant submitted a copy of part of a tenancy agreement dated December 5, 2012 for a month to month tenancy beginning on December 6, 2012 for a monthly rent of

\$1,350.00 due on the 1st of each month with a security deposit of \$675.00 paid. The parties agreed the tenancy ended on April 24, 2017.

The landlord submits the tenant failed to pay rent to the landlord for the months of January and February 2017 in the amount of \$2,700.00. The landlord claims this amount plus \$100.00 for late fees. I note that the landlord did not submit a copy of the tenancy agreement with this tenant and the tenant only submitted a portion of his copy of the tenancy agreement. The portion of the tenant's copy of the agreement had no clauses in relation to a requirement for the tenant to pay a fee when rent is paid late.

The tenant does not dispute that he withheld rent from the landlord. He stated he withheld the rent because the landlord owed him for repairs he had made to the residential property during the tenancy and for additional hydro and gas utility charges.

I note the tenancy agreement stipulated that the tenant was responsible for having the utilities in his name. The landlord submitted that they had an agreement that he would collect the 20% of the monthly utility bills from the occupant below this tenant. He would later compensate the tenant for this amount. The tenant submitted that there was no such agreement but that is what the landlord.

The tenant submitted that when the occupant moved into the other rental unit on the property they started using more utilities. He stated that several people came and went from the property and they were using excessive utilities. During the hearing the tenant stated he sought additional compensation over and above the 20% of the total utilities in the amount of an additional 25% or a total of 45% of the utility costs for the duration of the tenancy. In his written submissions the tenant claimed only 35%.

In support of his claim the tenant has submitted a number of tables.

- Document 1 is entitled "Electric Consumption Rate" recording hydro consumption for the period January 2013 to March 2017.
- Document 2 is a table listing date ranges and dollar amounts; another table also listing "consumption billing receivable"; "incoming payment" and "late payment charge"; and a third table entitled energy usage for the period November 30, 2013 to January 30, 2014. The tenant submitted this table represented hydro usage;
- Document 2 Teresen is another table that has listed "consumption billing receivable"; "incoming payment" and "late payment charge" and heading.

The tenant submitted that the documents provided as evidence substantiate the increased amount of usage from the downstairs occupants that warrants an increase in the amount of the utility percentage. The tenant seeks \$2,139.00 for hydro and \$1,466.00 for gas utility.

The tenant also seeks compensation in the amount of \$559.00 for the cost of his labour and supplies to repair a door; a bathtub faucet; a kitchen sink pea trap; and a toilet. The tenant submitted that he reported problems and that the landlord would send someone who could not complete the repair properly and so he would have to make the repairs himself.

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.

Section 26 of the *Act* stipulates that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent. Such reasons include an overpayment of a security deposit or the costs of emergency repairs pursuant to Section 33 of the *Act*, or as ordered by the director.

Section 33(1) of the *Act* defines "emergency repairs" as repairs that are urgent, necessary for the health or safety of anyone or for the preservation or use of residential property, and made for the purpose of repairing:

- Major leaks in pipes or the roof,
- Damaged or blocked water or sewer pipes or plumbing fixtures,
- The primary heating system,
- Damaged or defective locks that give access to a rental unit, or
- The electrical systems.

Section 33(3) states a tenant may have emergency repairs made only when all of the following conditions are met:

- Emergency repairs are needed;
- The tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs; and
- Following those attempts, the tenant has given the landlord reasonable time to make the repairs.

Section 33(4) states a landlord may take over completion of an emergency repair at any time. Section 33(5) stipulates that a landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant claims reimbursement for those amounts from the landlord, and gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

Section 33(7) allows that if a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

From the submissions of the tenant, I find the tenant has failed to provide any evidence that he has followed any of the procedures noted in Section 33 to deal with the emergency repairs in a manner that requires reimbursement. That is the tenant provided no evidence that he attempted to contact the landlord at least twice after the repairs had been made by someone else were not sufficient; that the landlord then failed to make any repairs and/or that the tenant provided the landlord with any invoices or receipts for the cost of those repairs. In addition, I find the tenant has failed to provide any evidence that the repairs he states he completed were of an urgent nature or necessary.

Based on the above, I dismiss the tenant's claim for \$559.00 for the cost of emergency repairs. Furthermore, I find the tenant did not have any authority under Section 33 to withhold this amount from any rent paid.

In addition, I find there is nothing in the *Act* that allows a tenant to withhold the payment of rent to the landlord when the tenant believes he is paying too much for utilities or when he wants to renegotiate this amount with the landlord. As a result, I find the tenant has provided no reasons allowable under the *Act* to withhold any rental payment. I find the landlord is entitled to their claim for the amount of unpaid rent.

Section 7(1) of the Residential Tenancy Regulation states that a landlord may charge any of the following non-refundable fees:

- (a) Direct cost of replacing keys or other access devices;
- (b) Direct cost of additional keys or other access devices requested by the tenant;
- (c) A service fee charged by a financial institution to the landlord for the return of a tenant's cheque;
- (d) Subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;
- (e) subject to subsection (2), a fee that does not exceed the greater of \$15 and 3% of the monthly rent for the tenant moving between rental units within the residential property, if the tenant requested the move; and
- (f) A move-in or move-out fee charged by a strata corporation to the landlord;
- (g) A fee for services or facilities requested by the tenant, if those services or facilities are not required to be provided under the tenancy agreement.

Section 7 (2) states a landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

As the only copy of the a tenancy agreement between these two parties is the partial one that the tenant submitted and as noted above it contains no clauses on the landlord charging a late payment fee, I find that there is no evidence before me that the tenancy agreement had such a clause as is required under Section 7 of the Regulation I find the landlord cannot claim any late payment fees. I dismiss this portion of the landlord's claim for \$100.00.

In regard to the tenant's claim for additional utility costs, I find, on a balance of probabilities, the parties agreed that the tenant would be compensated in the amount of 20% of actual usage for the occupant's usage below him. I make this finding in part because the tenant took advantage of the agreement by reducing his rental payments throughout the tenancy to accommodate the 20%.

I also find that while the cost of his utilities may have gone up at certain times during the tenancy he has provided no evidence of what those increases were due to such as his assertion that the downstairs occupants were using too much; as a result of the increased usage from the tenant's own usage or just a general increase in rates of both utilities.

Furthermore, I find that when parties agree to terms in any agreement they are bound by those terms unless they can successfully renegotiate those terms. The terms cannot be changed just because later one party believes the terms are no longer fair. As a result, I dismiss the tenant's claim for any additional compensation for hydro or gas utilities.

Conclusion

Based on the above, I grant the landlord a monetary order pursuant to Section 67 in the amount of **\$2,800.00** comprised of \$2,700.00 rent owed 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: September 01, 2017

Residential Tenancy Branch