



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MNSD, MND, FF

Introduction

This hearing dealt with the landlord's application filed April 13, 2017 under the *Residential Tenancy Act* (the "Act") seeking compensation for unpaid rent and utilities and for damage to the rental unit, authorization to retain the security deposit, and recovery of the application filing fee.

Both parties attended the hearing and had a full opportunity to be heard, to present affirmed testimony and documentary evidence, to make submissions, and to respond to the submissions of the other party.

Service of the landlord's application and notice of hearing was not at issue. The tenant also confirmed receipt of the landlord's evidence. The tenant did not file any evidence.

In her original application the landlord sought only prorated rent for the first half of April. At the hearing, and in materials served on the tenant in advance of the hearing, the landlord indicated that she sought rent for all of April and also for the month of May. The Residential Tenancy Branch's Rules of Procedure allow for amendments that can be easily anticipated by the other party. I accept the landlord's amendment because I conclude that the tenant can reasonably anticipate having to pay rent on a monthly basis, regardless of whether she occupied the rental unit for the whole of the month.

Issue(s) to be Decided

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

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

Is the landlord entitled to compensation for loss or damage?

Is the landlord entitled to retain some or all of the security deposit?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

A copy of the tenancy agreement was in evidence. It indicates a monthly rent of \$1,250.00 due on the first day of the month for a month to month tenancy commencing on December 1, 2016. It also indicates that a security deposit of \$625.00 and a pet deposit of \$600.00 were required. It was agreed that the tenant paid the security deposit in full but paid only \$100.00 of the pet deposit and that the intention was for her to pay the balance owing over time. As it stands, the landlord holds \$725.00 in deposits in total. The tenancy agreement does not include electricity or heat.

The landlord stated that the tenant moved out without written notice to end the tenancy, and that she only became aware that the tenant was leaving when her rental agent drove by the rental property and saw the tenant moving her belongings. An email dated April 20, 2017 from the agent, SS, to the landlord was in evidence. It includes the following summary:

You and I only found out that she was moving because I drove by the house on my way to work and noticed the truck packed up and that the house looked empty. When I approached [the tenant], she offered to let me come in and look around, which I did. I gave her an additional 6 days to complete the cleaning so that you would not face any further expense in regards to this tenant. She was extended an additional 3 days because she was not available to meet me to complete the paperwork. We finally met on the morning of April 13, 2017.

It was agreed that a move-in inspection was conducted on November 18, 2016 and a move-out inspection was conducted on April 13, 2017. A copy of the condition inspection report was in evidence. It includes the tenant's forwarding address.

The move-out section of the report indicates a hole in the wall, and that the fireplaces and appliances and carpets and basement floors all required cleaning. A box indicating that the tenant agrees that the report fairly represents the condition of the rental unit at move-out has been ticked and the tenant has signed the report at move-out. An email from the landlord's rental agent to the landlord dated April 20, 2017 sets out the same issues with the state of the unit at the end of the tenancy.

The landlord claims for unpaid rent for April and May because the tenant did not give her at least one month's notice at least the day before the rent was due.

The landlord also claims \$268.96 for hydro for that period of the tenancy when the account was still in the landlord's name. She testified that because the tenancy agreement does not include hydro or heat/natural gas, she assumed that the tenant would open utilities accounts under her own name. As soon as she received the first hydro bill for the rental property, she began asking the tenant to open her own account, and the tenant did so around December 19, 2016.

The hydro bill in evidence breaks down the amounts owing by date, and indicates a total of \$238.93 owing for the period between November 24 and December 19. At the hearing the landlord submitted that the tenant is responsible for all of this amount because she moved in early, around November 18, 2016.

The landlord further claims \$1,330.04 for natural gas for the duration of the tenancy. The landlord says that there was no question that this utility was not included in the monthly rent, as it is costly in their particular location, which is particularly cold. Although there was another invoice in evidence, the landlord relied on an invoice dated March 16, 2017 indicating an amount owing of \$1,339.04 for the period between January 13 and March 10, 2017.

Although the landlord did not point to it during the hearing, her evidence also includes an email dated March 8, 2017 from the tenant asking her if she is willing to negotiate the rent because it is too much and stating: "I will put the gas in my name. And I will call BC Hydro to confirm my move in date."

Also in evidence is an email dated March 7, 2017 from the landlord to the tenant attaching hydro invoices and calculating a prorated amount of \$176.74 owing for hydro for the period between December 1 and December 19, 2016. In this email the landlord also says that she has already contacted the utilities company to advise that the tenant is responsible for this amount, and says that "the other issue" is that the tenant did not put the gas in her name and wondering why she has not done so, as "no utilities are included in the rent."

The landlord also claims \$250.00 for cleaning the rental unit after it was vacated. A receipt for this service was in evidence. It indicates a charge of \$200.00 for cleaning and \$50.00 for garbage removal.

Lastly, the landlord claims \$140.00, representing the cost of her rental agent's time attempting to contact the tenant when the tenant was not responsive to the landlord's communication and to serve notices on her.

The tenant in response agreed that she did not give written notice. She testified that she gave the landlord's agent verbal notice on April 2, 2017, and that she left because the rent was too expensive and the house had flooded at least twice.

The tenant also said that she and the landlord had a verbal agreement that hydro and natural gas were included in the monthly rent. She submitted that if there had not been a verbal agreement, the landlord would have cut off the utilities, which she did not do. The tenant also said that she did not move in as early as the landlord alleges, and was in fact between houses during that time.

Analysis

The landlord and the tenant disagree about when and how the tenant communicated that she would be ending the tenancy. The tenant says that she gave the landlord's agent verbal notice on April 2, 2017 and the landlord says that the agent only discovered the tenant's intentions by chance later in April.

Section 45(1) of the Act requires that a tenant give notice to end a month to month tenancy effective on a date that is (a) no less than one month after the notice is given, and (b) is the day before the day in the month that rent is payable. This means that in order to avoid being responsible for May's rent, the tenant would have had to give notice on March 31, 2017. Based on her own testimony, the tenant gave notice no earlier than April 2. Accordingly, the tenant is responsible for both April and May rent.

The tenant testified that there was an oral agreement that utilities were included in the rent. I do not accept this. It is contrary to the written tenancy agreement, which the tenant signed. It is also inconsistent with the emails between the parties from March, 2017, referenced above. Accordingly, I find that neither hydro nor natural gas were included in the rent, and I accept the landlord's claim for unpaid utilities.

However, I award the landlord the cost of hydro only for the period between December 1 and 19 of 2016, (as calculated by the landlord in her email to the tenant). There was conflicting evidence as to when the tenant began to occupy the rental property and there was no documentary evidence to support either party's version of events. The

tenancy agreement itself provides that the tenancy began December 1, and I therefore conclude that the tenant is only responsible for utilities as of that date.

I award the landlord the \$1,339.04 claims for natural gas, based on the invoice in evidence.

I accept the landlord's claim for cleaning and garbage removal. The tenant acknowledged signing off on the move-out condition inspection report, which reflects the cleaning and repairs required, and she should not have done so if she did not agree with its contents. The landlord has also submitted an invoice for these costs.

I do not award the landlord the costs associated with her rental agent. These are the costs of doing business as a landlord. Additionally, the tenant should not be required carry the costs arising from the fact that the landlord does not live closer to the rental property.

As the landlord has been successful in this application, the landlord is also entitled to recover the \$100.00 filing fee from the tenant.

I issue a monetary order for the landlord on the following terms, which allows the landlord to obtain a monetary award for unpaid rent and utilities and cleaning, recover the filing fee, and retain the security deposit for this tenancy:

April and May rent	\$2,500.00
Hydro (December 1 – 19, 2016 only) (amount as per landlord's calculations in landlord's email)	\$176.74
Natural gas	\$1,339.04
Cleaning and garbage disposal	\$250.00
Filing fee	\$100.00
Less security and pet deposits	-\$725.00
TOTAL	\$3,640.78

Conclusion

I issue the landlord an order for **\$3,640.78**. The tenant must be served with this order as soon as possible. Should the tenant fail to comply with the order it may be filed in the Small Claims Division of the Provincial Court and 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 s. 9.1(1) of the Act and is final and binding under s. 77 unless otherwise indicated in the Act.

Dated: September 14, 2017

Residential Tenancy Branch