



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for a monetary order for unpaid rent pursuant to section 67 and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The tenant acknowledged receipt of the landlord's Application for Dispute Resolution. Both parties confirmed receipt of the other's evidentiary submissions for this hearing.

Issue(s) to be Decided

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

Background and Evidence

This tenancy began on September 1, 2016 as a 9 month fixed term tenancy with a monthly rental amount of \$550.00. The landlord testified that he returned the tenants' \$275.00 security deposit to them at their request. The landlord provided undisputed testimony that the tenants were out of country and suffered a tragic loss. Therefore, in consideration of their circumstances, he agreed to return their deposit prior to the end of the tenancy. The landlord sought to recover \$393.08 from the tenants for utility bill overages at the end of the tenancy.

The landlord submitted a copy of the residential tenancy agreement as evidence for this hearing. The agreement indicated that the tenants were to pay utilities as well as their

monthly rental amount. The landlord testified that the utilities were billed every 3 – 4 months. He testified that the tenants paid \$100.00 for the utilities from September to December 2016. He testified that, after they failed to pay rent and utilities in 2017, he issued a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities on March 31, 2017. The landlord testified that the tenants were made aware of the utility bills paid.

The residential tenancy agreement, provided by the landlord to the tenants at the outset of the tenancy and signed by both the landlord and the tenants read that the tenant was required to pay any amount billed over \$50.00 per month for each of 2 utilities as well as 1/3 of another utility bill. As documentary evidence, the landlord submitted a typewritten list of the outstanding utility bill amounts, calculating the tenant's portion of the bills as well as copies of the bills themselves. The landlord also submitted a copy of an addendum to the tenancy agreement that reads,

Landlords will pay ...[utility 1] up to max C\$50. - per month and ...[utility 2] ... up ..to max C\$50.- per month. Whatever is billed over these amounts to be paid by the tenants to the Landlord...

And

1/3 of the water bill (received quarterly) to be reimbursed by the Tenant.

The landlord also submitted a copy of the condition inspection report completed at the end of this tenancy. Written on the condition inspection report, signed by both parties is that the tenants disputed the outstanding utility amounts owed according to the landlord at the end of the tenancy.

The tenants' representative testified that the landlord keeps getting the amount wrong. He pointed to the residential tenancy agreement that states the tenants were required to pay 1/3 of the utilities. The tenants' representative provided undisputed submissions that the landlord increased the amount of utilities payable by the tenants from 1/3 to 1/2. The tenants gave sworn undisputed testimony that they were required to pay 1/3 of the utilities however the calculated figures submitted by the landlord equal 1/2 of the utilities. The tenants testified that this failure to properly calculate the amounts is the only reason that they have not paid the outstanding utility balance. The tenants testified that they had not been provided the utility bills and therefore could not calculate their portion owed themselves.

The landlord did not dispute that he increased the portion that the tenants were required to pay. He testified that the amount increased during the tenancy because a second person moved into the rental unit. The tenants testified that the landlord was aware of

the second resident –this second resident was present for the signing of the residential tenancy agreement and his name is listed on the agreement as a tenant. The landlord testified that he did not provide any notice of this change in the portion of utilities owed by the tenants to the tenants during the tenancy. The tenants testified that they did not agree to a change in the amount of utilities they were required to pay.

The landlord testified that the agreement for utilities was based on trust and that he was not informed about the additional tenant. The agreement changed, the landlord submitted because the consumption of utilities increased with the addition of the second resident/tenant. He testified that the bills (more heat, more water and electricity) were noticeably higher as a result of the second resident's move-in.

Analysis

A substantial amount of written material was submitted for this hearing by the parties. I have reviewed and considered all the documentary evidence and all of the testimony of the parties, however not all details of the party's respective submissions and / or arguments are reproduced here. The principal and most relevant aspects of the landlord's claim and the tenants' response are set out above. My findings on the sole issue for this application (payment of utilities) are set out below.

I note that the landlord's application is based on the claim that the tenant failed to pay her portion of the utilities in accordance with the residential tenancy agreement. The tenant acknowledged that she owes an amount for the final utility bills at the rental unit at her agreed upon portion of the total bill (1/3). I find that the residential tenancy agreement favours the tenant's position in that it indicates the tenant will be responsible for 1/3 of the utilities listed in the agreement.

The amount sought by the landlord is based on the claim that the tenant has an "additional occupant" residing in the unit and therefore her use of the utilities has increased beyond 1/3 of the total. However, I find that the individual who the landlord refers to as an additional occupant is a named tenant on the residential tenancy agreement and that the landlord was aware of this individual's part of the agreement from the outset of the tenancy. I accept the testimony of this individual at the hearing as well as the testimony of the tenant. I do not accept the landlord's proposition that he was not aware of the second resident in the rental unit. Therefore, the tenants are responsible for 1/3 of the utility bills that were unpaid and relate to the duration of this tenancy.

When a landlord and tenant enter into a tenancy agreement, written or verbal, each is expected to meet their responsibilities under the *Act*; a tenant is expected to pay rent and any other charges (including utilities) as agreed upon; a landlord is expected to provide the premises as agreed to. In most circumstances, when assessing a claim for damage, Section 67 of the *Act* applies. The section indicates that if one party to the tenancy incurs a loss as a result of the actions of another party, an arbitrator may determine the amount of that damage or loss and order payment. The party claiming the damage or loss bears the burden of proof to show the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the landlord.

In this case, the landlord has shown financial loss in that he has not been compensated for the utility bills that the tenants had agreed to pay during the course of the tenancy. The tenants did not dispute their obligation to pay a portion of the utilities but disputed the amount calculated by the landlord. The Residential Tenancy Policy Guidelines provide that, even when one party to the tenancy is not strictly in violation of the *Act*, there may be circumstances where compensation is still appropriate. I find, in this case that the tenants are required to pay their portion of the utilities in accordance with the residential tenancy agreement and in accordance with the *Act*.

The types of damages an arbitrator may award include but are not limited to; expenditures proved at the hearing; an amount reflecting a general loss where it is not possible to place an actual value on the loss; and “nominal damages” where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right. In this case, there is no dispute between parties that the tenant owes the landlord an amount for unpaid rent. However, in accordance with section 59, I find that the landlord has not provided sufficient particularization of his claim in that the landlord’s calculations are both confusing and in an amount that does not reflect the tenancy agreement terms.

The tenant submitted that she has been unable to reach a reasonable outcome with the landlord to resolve and pay any amount that she does owe. Section 59 of the *Act* provides the requirements for an application for dispute resolution. An application must be submitted in the approved form and “include full particulars of the dispute that is to be the subject of the dispute resolution proceedings”. I find that the landlord’s application does not disclose sufficient particulars of a dispute in that he was, in both his application materials and his presentation at this hearing unclear about how he arrived at the amounts that he required the tenant to pay.

I find that the landlord has made erroneous calculations on the basis that the tenant is required to pay 1/2 of the utilities when she is in fact only required to pay 1/3. Based on all of the evidence at this hearing, my findings with respect to the residential tenancy agreement and my findings that the landlord has been less than accurate in his calculations, I find that the landlord is entitled only an amount reflecting a general loss as it is not possible to place an actual value on the loss amount from the tenant and that the landlord failed to prove the exact amount he is owed. This amount reflects the landlord's entitlement as agreed upon by the tenant to pay a portion of the outstanding utility bills. I find that the landlord is entitled to \$150.00 in full satisfaction of the tenant's payment obligation to the utility bills at this rental unit.

As the landlord was partly successful in his application, I find that the landlord is entitled to recover the \$100.00 filing fee for this application.

Conclusion

I issue a monetary order to the landlord in the amount of \$250.00.

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 18, 2017

Residential Tenancy Branch