



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR FF

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act"). The landlord applied for a monetary order for unpaid rent or utilities, and to recover the cost of the filing fee.

On October 3, 2017 the teleconference hearing commenced and after 42 minutes, was adjourned to allow sufficient time for the landlord to return from out of town and for tenant's counsel to re-serve 34 pages of colour documents and the 8 page affidavit onto the Residential Tenancy Branch ("RTB"). An Interim Decision dated October 4, 2017 was issued which should be read in conjunction with this decision.

On January 9, 2018, the parties reconvened and concluded. In attendance at both dates of this proceeding were the landlord, the landlord's counsel, the tenants and the tenants' counsel. During the hearing the parties were given the opportunity to provide their evidence orally and respond to the testimony of the other party. I have reviewed all evidence before me that was presented during the hearing and that met the requirements of the Rules of Procedure. However; only the evidence relevant to the issues and findings in this matter are described in this decision.

At the reconvened portion of the hearing, the landlord's 58-page late evidence package that was submitted contrary to the orders I set out in my Interim Decision was not considered which the ~~tenant~~ **landlord** stated she understood. The ~~tenant~~ **landlord** stated there was a miscommunication between her and her counsel and understood I could not consider the late evidence submitted by the landlord as I find that doing so would prejudice the tenants. Regarding the remainder of the evidence served on the parties and the RTB, I find there to be no service issues.

Preliminary and Procedural Matter

The parties provided their email addresses at the outset of the hearing which were confirmed by the undersigned arbitrator and confirmed that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy began on July 10, 2009 and reverted to a month to month tenancy after July 31, 2011. The tenancy ended on July 31, 2016 when the tenants vacated the rental unit.

The landlord's monetary claimed of \$6,817.65 contained a minor mathematical error and I find the landlord's claim actually totals \$6,817.48 and is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. 2011 outstanding utilities	\$801.13
2. 2012 outstanding utilities	\$747.53
3. 2013 outstanding utilities	\$920.57
4. 2014 outstanding utilities	\$1,041.75
5. 2015 outstanding utilities	\$1,311.34
6. 2016 outstanding utilities	\$1,204.96
7. Water bill to March 31(District of O.B.)	\$570.56
8. Emails regarding outstanding monies (Utility, rent, oil)	\$219.64
TOTAL	\$6,817.48

Regarding items 1 through 6, the landlord is claiming unpaid utilities dating back to 2011. Tenant's counsel raised an argument that the landlord should not be permitted to go back further than two years. The parties were advised that I would reserve my decision on that matter. Instead, the landlord had the opportunity to present her evidence in relation to items 1 through 6 which were similar and contained a screen shot printout of what the landlord described as a year-end tax summary and the words "transfer utility". The document did not however, specify what type of utilities were being transferred and the landlord first testified that she was not aware that utilities were not being paid by the tenants due to the account being in the name of the tenants and for privacy reasons she as the property owner could not find out if the utilities were being paid. Later in the hearing, the landlord contradicted herself by stating that she had received "utility reminder notices" indicating that the utilities were not being paid and stated that she did not feel that those notices were important enough to submit in evidence. The tenants disputed that they owed utilities pursuant to items 1 through 6.

The landlord was advised during the hearing that items 1 through 6 were dismissed due to insufficient evidence and for what I find to be contradictory testimony by the landlord. Firstly, I do not find it reasonable that the landlord as property owner could not inquire as to the status of whether utilities are being paid on her own property. Furthermore, the landlord provided insufficient evidence of such a response from the local municipality such a letter citing privacy concerns. Furthermore, the landlord failed to provide supporting documentary evidence of the specific type of utilities and as such, I dismiss items 1 to 6 **without leave to reapply** due to insufficient and contradictory evidence. Given the above, I find that I do not need to consider the tenants' counsel argument regarding going back further than two years as it is now moot given that items 1 to 6 have been dismissed.

During the hearing, the parties reached a mutually settled agreement regarding item 7, for an unpaid water bill in the amount of **\$570.56**. This settlement agreement was reached in accordance with section 63 of the *Act*. The parties confirmed their understanding and agreement that this mutually settled

agreement was made on a voluntary basis and that the parties understood the final and binding nature of their settlement agreement and that it was enforceable.

Regarding item 8, the landlord has claimed \$219.64 for “utility, rent, oil” but does not provide a breakdown of how the landlord arrived at that amount. The landlord referred to an email that does not indicate the amount of \$219.64. This item was dismissed due to insufficient particulars which will be discussed further below.

Analysis

Based on the documentary evidence, the oral testimony of the parties, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the tenants. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the landlord did what was reasonable to minimize the damage or losses that were incurred.

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.

As described above, items 1 to 6 have been dismissed without leave due to insufficient and contradictory evidence. I do not find the landlord to be credible as her testimony was contradictory as she first claimed that she was not aware that utilities were not being paid and then later admitted that she was aware as she had received notices of unpaid utilities that she did not feel were important enough to submit in evidence.

Regarding item 7 and as noted above, the parties reached a mutually settled agreement in the amount of **\$570.56**. As a result, the tenants are ordered to comply with the mutual agreement pursuant to section 63 of the *Act*.

Regarding item 8, the landlord has claimed \$219.64 for “utility, rent, oil” but does not provide a breakdown of how the landlord arrived at that amount. As a result, **I dismiss** this portion of the landlord’s claim as it does not comply with section 59(2)(b) of the *Act* which requires that an applicant include full particulars. I find that as the arbitrator if I am unable to determine how the applicant has arrived at an amount being claimed that it would be difficult, if not impossible, for the respondent to determine the amount. The

landlord referred to an email which did not state the amount of \$219.64. Therefore, this item is dismissed without leave to reapply due to insufficient particulars.

Other than the mutual agreement, I find the landlord's claim had no merit. Therefore, I do not grant the landlord the recovery of the cost of the filing fee.

I also note that the landlord has not claimed against the tenants' security deposit and/or pet damage deposit, if any. I also note that the parties brought to my attention that they have an April 2018 hearing scheduled for the tenants' application and that the tenants have claimed for the return of their security deposit. The file number of the April 2018 hearing has been included on the cover page of this decision for ease of reference. Accordingly, I have not considered the tenants' security deposit and/or pet damage deposit, if any, in this decision.

I find the landlord has established by mutual agreement, a monetary claim of **\$570.56**. Therefore, pursuant to section 67 of the *Act*, the landlord is granted a monetary order in the amount of **\$570.56**. The remainder of the landlord's application is dismissed, without leave to reapply.

Conclusion

Items 1, 2, 3, 4, 5, 6, and 8 are dismissed without leave to reapply.

Item 7 was resolved between the parties by way of a mutually settled agreement with the tenants agreeing that they owe the landlord \$570.56. The parties have been directed to comply with their mutually settled agreement pursuant to section 63 of the *Act*.

The landlord has been granted a monetary order pursuant to section 67 of the *Act*, for the amount owing by the tenants to the landlord in the amount of \$570.56. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: January 12, 2018

Dated corrected: January 25, 2018

Residential Tenancy Branch