



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUNGOMA COTTAGES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC MNSD

Introduction

This hearing was convened as a result of the tenants' Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act"). The tenants applied for \$400.00 for the return of double their \$200.00 security deposit balance, and for \$1,350.00 as reimbursement for what the tenants allege were overcharged hydro bills.

The tenants and landlord agent R.D. ("agent") appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties presented their evidence. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

Neither party raised any concerns regarding the service of documentary evidence.

Preliminary and Procedural Matters

At the outset of the hearing, the tenants requested to have the decision sent to them by regular mail and not email as they no longer have access to the email address that was provided in their application. The landlord agent provided his email address which was confirmed during the hearing and the parties were advised that the decision would be sent to them as requested above.

By consent of the parties, the landlord agent's name was removed as a respondent. This amendment was made in accordance with section 64(3) of the *Act*.

During the hearing, the tenants confirmed that they have not provided their written forwarding address in writing to the landlord since vacating the rental unit on May 1, 2017. As a result, and pursuant to Residential Tenancy Branch ("RTB") Practice

Directive 2015-01, **I ORDER** that the date of the hearing, January 4, 2018 is the date the landlord was served with the tenants' written forwarding address which is a box number and has been included on the cover page of this decision for ease of reference. The landlord agent was informed that the landlord has 15 days to either file a claim towards the \$200.00 security deposit balance or return the \$200.00 security deposit in full to the tenants. Given the above, I dismiss the tenants' application for double their \$200.00 security deposit balance **with leave to reapply**.

Issue to be Decided

- Are the tenants entitled to monetary compensation for the alleged overpayment of hydro bills under the *Act*, and if so, in what amount?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on October 1, 2014 and ended on May 1, 2017 when the tenants vacated the rental unit.

The tenants are seeking \$1,350.00 in reimbursement for what they claim is overpaid hydro bills. The parties agreed that the tenants paid \$50.00 per month for electricity on top of their monthly rent. The tenants claim that they had a verbal agreement with a former property manager that rent included electricity which is not reflected on the written tenancy agreement. The written tenancy agreement indicates on page two that electricity and heat is not included in the monthly rent. The tenants acknowledged that is what the written tenancy agreement says that they signed in 2014.

Analysis

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

The parties were advised during the hearing that a verbal agreement that is disputed does not override a written tenancy agreement. The agent did not agree that a verbal agreement was made that included hydro costs in the monthly rent. In fact, the tenants paid the extra \$50.00 for electricity throughout the tenancy. As a result, I find the tenants have failed to prove that the landlord breached the *Act* and failed to prove that the tenancy agreement included electricity and as a result, **I dismiss** the tenants' application for hydro bill compensation **without leave to reapply** due to insufficient evidence.

In addition to the above, section 7 of the *Act* states in part:

Liability for not complying with this Act or a tenancy agreement

- 7** (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

[My emphasis added]

Therefore, I find the tenants failed to comply with section 7(2) of the *Act* by waiting until the tenancy ended to seek compensation that dated back to the start of the tenancy and that the tenants should have applied closer to the start of the tenancy to have complied with section 7(2) of the *Act*.

Conclusion

I find the tenants' application for the return of their security deposit balance to be premature. As of the date of this hearing, January 4, 2018 I find the landlord has been served with the tenants' written forwarding address which was confirmed during the hearing and has been included on the cover page of this decision for ease of reference. The landlord agent was informed that the landlord has 15 days to either file a claim towards the \$200.00 security deposit balance or return the \$200.00 security deposit in full to the tenants. Given the above, I dismiss the tenants' application for double their \$200.00 security deposit balance **with leave to reapply**.

The tenants' claim for hydro bill compensation is dismissed without leave to reapply, due to insufficient evidence.

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 4, 2018

Residential Tenancy Branch