



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDC MNR MNSD FF O

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for damages or losses arising out this tenancy pursuant to section 67 of the *Act*;
- an Order to retain the security or pet deposit pursuant to section 38 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Both the tenant and landlord, O.C., (the "landlord") attended the hearing. Both parties were given a full opportunity to be heard, to present their sworn testimony and to make submissions.

The tenant acknowledged receipt of a copy of the landlords' Application for Dispute Resolution and evidentiary package.

Issue(s) to be Decided

Can the landlords retain the tenant's security deposit?

Are the landlords entitled to a monetary award?

Can the landlords recover the filing fee?

Background and Evidence

Undisputed testimony provided at the hearing by the landlord explained that this tenancy began on September 4, 2016 and ended on June 30, 2017. Rent was ~~\$1,350.00~~~~\$675.00~~ per month, and a ~~security and~~ utilities deposit of \$675.00 each collected at the outset of the tenancy, continues to be held by the landlords.

The landlord explained that the tenant had previously occupied the rental unit from October 2015 to June 2016 and returned to the rental unit following a short absence.

The landlord is seeking a monetary award of \$1,340.95 for unpaid utilities, and carpet cleaning which she said was not performed following the conclusion of the tenancy. The landlord said that the tenant had failed to pay any utility bills for the entire period of his tenancy.

The tenant did not deny the figure cited by the landlord of \$1,340.95 accurately reflected the unpaid utilities but explained that the rental unit was in poor condition, leading to excessive heating bills, that he had incurred expenses related to gardening which was not performed, that utilities were being used by the landlord which went beyond the scope of the tenancy, and that the maximum utility bill for the rental would be \$250/month.

As part of his written submissions, the tenant acknowledged that he had not paid the outstanding carpet cleaning and utility bills, but argued that, "The premises was (sic) not adequately insulated or suitable for habitation in the event of extreme weather. The utility bills (heating) during the winter were outrageous and we were extremely cold the whole time, even after supplementing the heating with a full cord of wood (\$200). The condition of the unit he rented was poor and minimally maintained."

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove 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 other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove her entitlement to a monetary award.

I find that it is indisputable that the landlord suffered a loss that can be directly attributable to the tenant's non-payment of the utility bills associated with the rental unit. The landlord applied for a monetary award for actual financial loss related to the bills which were not paid between September 2016 and June 2017. The tenant acknowledged that ~~these bills~~ this amount

remained unpaid but argued that the rental unit was not suitable for habitation, that money he had paid for gardening works which were not performed was not returned and that the hydro bills associated with rental unit were excessive.

A reading of the tenancy agreement signed by the tenant and the landlord shows that the parties agreed to the following; "The landlord will continue contracted utility services for electricity, telus, water. The landlord will collect a monthly installment of \$250.00 for payment of these utilities which are not included in the rent." I find that this amount agreed to by the parties amounts to a figure above what the landlord is seeking for the period of the tenancy, and if the tenant had paid this figure, it would have amounted to approximately \$2,500.00.

I do not accept the tenant's reasons for refusal to pay the outstanding amounts. I have no application before me from the tenant for any loss that he has suffered as a result of payments made for gardening, and I find that the parties agreed in the tenancy agreement that the tenant would pay the associated utilities. The tenant had previously occupied the rental unit during the winter and was therefore aware of some of the expenses related to the associated bills. Furthermore, I find the tenant's arguments that he was paying an excessive amount of utilities to be inconsequential, because if the landlord had enforced the terms of the tenancy agreement, the tenant would have paid an amount greater than that being sought by the landlord in their application for a monetary award.

Section 67 of the *Act* allows a person to recover a monetary award when it can be shown that they suffered a loss, and that that loss can be attributed to a violation of the tenancy agreement or *Act*. I find that the landlord has suffered a loss as a result of the tenant's non-compliance with the terms of the tenancy agreement and is therefore entitled to the entire sum of her monetary claim.

While the landlord has collected a "utilities" deposit in contravention of the *Act*, I find that it would be impractical to have the landlord return this amount to the tenant and then issue a monetary award in the landlords' favour. I allow the landlord to retain the utility deposit in partial satisfaction for the monetary award. **Pursuant to section 72 of the Act, I allow the landlords' to retain the tenant's security deposit, also in partial satisfaction for the monetary award.**

As the landlord was successful in her application, she may recover the filing fee associated with the application.

Conclusion

I issue a Monetary Order of ~~\$765.95~~ **\$90.95** in favour of the landlords as follows:

Item	Amount
Recovery of unpaid utility bills	\$1,340.95
Recovery of Filing Fee	100.00

Less Utility Deposit	-675.00
Less Security Deposit	-675.00
Total =	\$765.95 \$90.95

The landlords are provided with a Monetary 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: January 26, 2018

Residential Tenancy Branch

DECISION AMENDED PURSUANT TO SECTION 78(1)(A)
OF THE RESIDENTIAL TENANCY ACT ON FEBRUARY 16, 2018
AT THE PLACES INDICATED IN **BOLD**.