



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenants: MNDC MNSD OLC FF O

For the landlords: MNR MNSD MNDC FF

Introduction

This hearing was convened as a result of the cross-applications of the parties for dispute resolution (“applications”) under the *Residential Tenancy Act* (“Act”). The tenants applied for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for the return of their security deposit, for an order directing the landlord to comply with the Act, regulation or tenancy agreement, for the recovery of the filing fee and other unspecified relief. The landlords applied for a monetary order for unpaid rent or utilities, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for authorization to retain the tenants’ security deposit, and to recover the cost of the filing fee.

The tenants and the landlords attended the teleconference hearing.

The tenants and the landlords appeared at the teleconference hearing and gave affirmed testimony. 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.

The tenants confirmed that they received the landlords’ application and documentary evidence. The landlords stated that they did not receive a monetary breakdown of the tenants’ monetary claim and were not sure of how the tenants arrived at the amount claimed as a result which I will deal with further below. I find the tenants were sufficiently served as a result of the above.

Preliminary and Procedural Matter

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

At the outset of the hearing, the tenants were advised that their application was being refused, pursuant to section 59(5)(c) of the *Residential Tenancy Act (Act)*, because the tenants' application for dispute resolution did not provide sufficient particulars of their claim which includes their claim for monetary compensation, as is required by section 59(2)(b) of the *Act*. I find that proceeding with the tenants' claim at this hearing would be prejudicial to the landlords, as the absence of full particulars including a monetary breakdown of the amount being claimed, makes it difficult, if not impossible, for the landlords to adequately prepare a response to a claim against them. As a result, the tenants' application is **dismissed with leave to reapply**.

As a result of the above, I will only be considering the landlords' application.

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy began on August 1, 2016 and was scheduled to end on July 31, 2017. The parties agreed that the tenants vacated on July 30, 2017. Monthly rent of \$1,100.00 was due on the first day of each month. The tenants paid a security deposit of \$500.00 at the start of the tenancy which the landlords continue to hold.

The landlord's monetary claim of \$1,028.51 is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. 6 utility bills	\$816.93
2. 1 heating (gas) bill	\$27.58
3. Lost wages A	\$432.00
4. Lost wages B	\$152.00
5. Filing fee	\$100.00
6. Retain security deposit	(Less \$500.00)
7. Acupuncture	No amount specified
TOTAL	\$1,028.51

Regarding items 3 and 4, at the outset of the hearing the landlords were advised that both items were dismissed as there is no remedy under the *Act* for lost wages as this matter relates to a residential tenancy and not a commercial tenancy. Therefore, both items were dismissed without leave to reapply and will not be considered further in this decision.

Regarding item 7, also at the outset of the hearing the landlords were advised that item 7 was being dismissed without leave to reapply as an amount was not specified in their claim and that I find it would be prejudicial to the tenants to increase the monetary claim from no amount listed to anything more than zero at the hearing. Therefore, item 7 was dismissed without leave to reapply and will not be considered further in this decision.

Regarding item 1, the landlords have claimed \$816.93 for six utility bills that the landlords allege the tenants failed to pay their portion of and owe as a result. The tenancy agreement submitted in evidence does not have electricity or heat checked off as being included in the monthly rent and in the additional information box it reads "Monthly electricity & gas over \$100 each pay by Tenants" ("additional information wording"). The tenants alleged during the hearing that the additional information wording was added after they signed the tenancy agreement without their knowledge. The landlords denied this. The tenants; however, stated that they "could not recall" the amount of their portion of the electricity and gas utility bills agreed upon with the landlords. The tenants also claim that the typed additional information wording was the only typed text in the tenancy agreement.

Regarding the six bills for item one, the landlords provided the utility bills in evidence which total \$816.93 and which I note does not include the \$100 portion that the landlords stated they agreed to pay per month as they also live inside the home. In other words, the \$816.93 is the tenants' portion of the amount owed as indicated in the landlords' claim.

Regarding item 2, the landlords submitted a gas bill summary which showed \$127.58 being the amount of the gas bill of which the landlords paid the first \$100.00 leaving a balance owing by the tenants of \$27.58. The tenants response was the same as item 1 listed above.

Regarding the filing fee, I will address the filing fee later in this decision.

Regarding the security deposit, I will address the security deposit later in this decision.

Analysis

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

I find the tenants' testimony that the typed additional information wording is not consistent with the tenancy agreement. Firstly, I note that the tenants claim that the typed text was the only typed text on the tenancy agreement to be incorrect. I find that other portions that were typed on the tenancy agreement that are the name of the landlord, the address of the rental unit, and the service address of the landlords. In addition, I find the tenants' response that they "could not recall" what the agreement was regarding utility bills to be unreliable and vague. Specifically, I find that if the tenants could not recall then how is it that they could recall that they did not agree to anything over \$100.00 as indicated on the tenancy agreement. Additionally, if that additional wording was not included on the tenancy agreement, then logically, the tenants would owe 100% of utility bills which the landlords did not allege at any time during the hearing. I also note that the tenancy agreement clearly does not have a check mark next to electricity and heat as being included in the monthly rent. For these reasons, I find that the utility bills amount to be paid by the tenants on the tenancy agreement is what was agreed upon between the parties on the balance of probabilities. Given this, I find the landlords have met the burden of proof and I find that the tenant's breached the tenancy agreement by failing to pay \$816.93 for item 1 and \$27.58 for item 2 as claimed. I grant the landlords both amounts in full as a result.

As indicated above, items 3, 4 and 7 were dismissed without leave to reapply. There is no remedy for lost wages in relation to a residential tenancy agreement under the *Act* as this is not a commercial tenancy. Item 7 was dismissed without leave to reapply due to insufficient details.

As the landlords' claim has merit, I grant the landlords \$100.00 for the recovery of the cost of the filing fee pursuant to section 72 of the *Act*. Based on the above, I find the landlords' total monetary claim to be \$944.51 which is comprised of \$816.93 for item 1, \$27.58 for item 2, plus \$100.00 for the filing fee.

Regarding the tenants' security deposit and pursuant to section 38 of the *Act*, I authorize the landlords to retain the tenants' full security deposit of \$500.00 in partial satisfaction of landlords' monetary claim. I grant the landlords a monetary order pursuant to section 67 of the *Act* for the balance owing by the tenants to the landlords in the amount of \$444.51.

Conclusion

The landlords' application has merit. The landlords have proven a total claim of \$944.51 and have been authorized to retain the tenants' full security deposit of \$500.00 to offset that amount. The landlords have been granted a monetary order for the balance owing by the tenants to the landlords in the amount of \$444.51. 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.

The tenants' application was refused pursuant to sections 59(5)(c) and 59(2)(b) of the *Act*. The tenants are at liberty to reapply however I note that I have already dealt with the security deposit in this decision through the landlords' application. I note that this decision does not extend any applicable time limits under the *Act*.

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: March 12, 2018

Residential Tenancy Branch