



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: CNR

Landlord: OPR MNR OPC MNDC FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on May 1, 2018.

The Landlord and the Tenant both attended the hearing. The Tenant brought her advocate with her. All parties provided testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. Both parties confirmed receipt of each other's documentary evidence and Notice of Hearing packages.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The Tenant confirmed that she has already moved out of the rental unit. The Landlord confirmed that this happened on March 29, 2018. Given this, I find the Tenant's application is now moot, and I dismiss it, without leave to reapply. Further, I dismiss the Landlord's request for an order of possession as it is also moot, given that he has already regained possession of the rental unit.

The only remaining issues are those that relate to the Landlord's request for monetary compensation, which will be addressed further below.

Issue(s) to be Decided

- Is the Landlord entitled to compensation for money owed or damage or loss under the Act?
- Is the Landlord entitled to compensation for unpaid utilities?

Background and Evidence

The Landlord is seeking compensation for two items. The first being that the Tenant owes him money for excessive electricity consumption, and the second being that the Tenant paid rent late every month and owes him late rent fees.

With respect to the first issue, the Landlord stated that the tenancy agreement specifies that electricity and heat is included in rent but that the Tenant is to keep the thermostat at 70 degrees Fahrenheit. This agreement was provided into evidence. The Landlord stated that he noticed his utility bills were higher than normal in early 2018. The Landlord stated that he received two utility bills which were approximately \$200.00 more than they usually are, the first of which he received on February 16, 2018, and the second of which was received on April 18, 2018. The Landlord stated that he attended the rental unit to investigate why the bills were so high, and he noticed that the Tenant had set the thermostats at 90 degrees Fahrenheit, rather than 70. The Landlord stated that he warned the Tenant to keep the temperature set at 70, as agreed upon, but when he attended the unit the next month, he noticed that the Tenant still had the heat set up at 90 degrees Fahrenheit.

The Landlord stated that he estimated that these two high bills he received were a result of the Tenant turning up the heat, and he believes he should get an extra \$200.00 for each of these two higher bills to compensate him for the misuse of the heat. In total, the Landlord wants \$400.00 for these estimated additional electricity costs.

The Tenant feels that she should not have to pay for additional power consumption as this was supposed to be included in the rent.

With respect to the late rent fees the Landlord is looking to recover, he provided a schedule of payments showing when he received rent payments. This schedule was provided into evidence and shows that rent was paid late for June 2017 right through until the tenancy ended in March of 2018, amounting to 10 months of late rent payments. The Landlord also pointed to the tenancy agreement which shows that there will be a \$25.00 a month late rent fee for rent that is paid after the first of the month.

The Landlord stated that the Tenant moved into his rental unit in May of 2017, and continued to pay her old landlord her rent. The Landlord stated that he had to liaise with the previous landlord each month, wait for money to be transferred, and each month it took between 3-4 additional days for him to receive the rent payments from the Tenant. The Landlord stated that he tried to get the Tenant to remedy the pay issue but she never did.

The Tenant stated that she worked with her advocate to remedy the pay issue at the start of her tenancy, so that her new Landlord would get the money rather than her old landlord. The Tenant's advocate was present at the hearing and stated that this never occurred and denied the Tenant's version of events on this point.

Analysis

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 whatever 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 tenant. Once that has been established, the landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the landlord did everything possible to minimize the damage or losses that were incurred.

With respect to the Landlord's request to be compensated for utility overages, I note the tenancy agreement includes heat and electricity. I also note that the Tenant agreed to keep the thermostats set at 70 degrees Fahrenheit. The Landlord stated that the Tenant turned the thermostat up to 90 degrees Fahrenheit, and the Tenant did not directly refute doing this. I find the Tenant breached the tenancy agreement in this regard. However, even though the Tenant breached the tenancy agreement by turning up the thermostat well above what she agreed to, I find the Landlord has failed to sufficiently quantify the value of his loss. I note that the Landlord's request for monetary amounts on this point appear to be based on estimates, and what the bill would have been under normal circumstances. I find there is insufficient evidence to show how the Landlord would have known with any degree of certainty what additional utility usage/costs would and should be attributed to the Tenant's misuse of the thermostat. It is not clear, based on the evidence before me, how many other rental units, or tenants, also share the same electrical connection/bill. Ultimately, I find the Landlord has not sufficiently proven the value of his loss on this matter, and I dismiss his claim, without leave to reapply.

Next, I turn to the Landlord's request for recovery of the late rent fees. I note that the tenancy agreement clearly states that if rent is paid late, a \$25.00 late rent fee is payable. The Landlord provided a ledger showing that rent has been late for the period from June 2017 until March 2018, which totals 10 months. The Tenant stated that she worked with her advocate to make sure her rent would be paid correctly, rather than it being sent to her previous landlord. However, the advocate who was also present disagreed with this version of events. I find the Tenant's evidence on this matter is internally inconsistent and is not reliable. I find it more likely than not that the Tenant failed to pay rent, on time, as the Landlord has stated because she kept paying rent to her previous landlord. I find the Landlord is entitled to recover late rent fees for the 10 months (10x\$25.00).

As the Landlord was partially successful with his application, I also grant him the recovery of the filing fee (\$100.00) against the Tenant, pursuant to section 72 of the Act.

In summary, I grant the Landlord a monetary order in the amount of \$350.00.

Conclusion

I grant the Landlord a monetary order in the amount of \$350.00. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be 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: May 02, 2018

Residential Tenancy Branch