



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenants: MNSD, FFT
For the landlord: MNRLS, FFL

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 the return of double their security deposit and pet damage deposit, and to recover the cost of the filing fee. The landlord applied for a monetary order for unpaid rent or utilities, to retain all or a portion of the tenants’ security deposit and/or pet damage deposit, and to recover the cost of the filing fee.

The landlord, a witness for the landlord and the tenants attended the teleconference hearing as scheduled. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me. I have reviewed all evidence before me 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.

Neither party raised any concerns regarding the service of documentary evidence and their respective applications. I find the parties were sufficiently served as a result.

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.

Issues to be Decided

- Is either party entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants' security deposit and pet damage deposit under the *Act*?
- Is either party entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

The parties agreed that a fixed-term tenancy began on August 15, 2015 and reverted to a month to month tenancy after July 31, 2016. The parties agreed that the tenants vacated the rental unit on October 31, 2017. The parties agreed that the monthly rent of \$1,400.00 did not include utilities and that the heat was electric heat in the rental unit.

Landlord's claim

The landlord's monetary claim of \$1,141.51 contained a mathematical error and actually totals \$1,040.61 and is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Unpaid hydro bill 1	\$403.90
2. Unpaid hydro bill 2	\$630.65
3. Late fee	\$6.06
TOTAL	\$1,040.61

Regarding item 1, the landlord has claimed \$403.90 for the unpaid hydro bill for the billing period of August 4, 2017 to October 4, 2017 inclusive. The landlord referred to a hydro bill submitted in evidence that supports that the landlord paid that amount and that the tenants were occupying the rental unit until October 31, 2017.

Regarding item 2, the landlord has claimed \$630.65 for an unpaid hydro bill for the billing period of October 5, 2017 to December 4, 2017. The tenants confirmed that they did not pay any portion of either hydro bill as the landlord put the utilities in the

landlord's name. The landlord affirmed that he was forced to put the utilities in his name to avoid the utilities from being shut off as the tenants failed to pay the utilities.

Tenants' claim

The tenants have claimed for the return of double their security deposit and pet damage deposit in the amount of \$2,800.00, plus \$1,400.00 as compensation for "last months rent not being used after eviction".

The tenants testified that they were seeking 25% compensation between January 2017 and October 31, 2017 due to the landlord using the cabin on-site which the tenants stated increased their hydro bill. This portion of the tenant's claim was dismissed during the hearing for two reasons; firstly the tenants did not apply for dispute resolution until almost a month after the tenancy ended which I find was a failure to comply with section 7 of the *Act* which I will further explain below, and secondly, that the amount claimed was not clearly set out by the tenants contrary to section 59 of the *Act*.

The tenants stated that the landlord has not returned any of their security deposit or pet damage deposit and that the landlord only provided the return of their October 2017 rent. While the landlord originally disputed that the tenants paid October 2017 rent, the landlord later agreed during the hearing that the amount he paid the tenants could have been the rent for October 2017 being returned as the parties agreed that the tenancy ended based on an undisputed 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice"). The tenants written forwarding address was provided on the outgoing condition inspection report dated October 31, 2017 submitted in evidence. The landlord did not file for dispute resolution until November 20, 2017.

Analysis

Based on the documentary evidence, testimony, 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 under the *Act* to minimize the damage or loss.

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.

Landlord's Claim

Item 1- The landlord has claimed \$403.90 for the unpaid hydro bill for the billing period of August 4, 2017 to October 4, 2017 inclusive. There is no dispute that the tenants did not pay this amount and were occupying the rental unit during this timeframe. Therefore, based on the wording of the tenancy agreement which does not include utilities in the monthly rent, and taking into account the hydro bill before me in evidence, I find the landlord has met the burden of proof and that the tenants owe **\$403.90** as claimed for item 1.

Item 2 – Although the landlord has claimed \$630.65 for an unpaid hydro bill for the billing period of October 5, 2017 to December 4, 2017, I find that the tenants are not responsible for the timeframe where they were not occupying the rental unit. As a result, as the tenants vacated the rental unit on October 31, 2017, I find the tenants are only responsible for the timeframe of October 5, 2017 to October 31, 2017 inclusive, which is a total of 27 days. As a result, I have divided the total bill of \$630.65 by 61 days for the billing period of Oct 5, 2017 to December 4, 2017 for a daily hydro rate of \$10.34 per day. October 5-31, 2017 is 27 days, November 1-30, 2017 is 30 days and December 1-4, 2017 is 4 days for a total of 61 days.

Given the above, I find the landlord has met the burden of proof for the amount of **\$279.18** for item 2. I have reached this amount by taking the daily hydro rate of \$10.34 and multiplying that by 27 days for October 5-31, 2017 inclusive. The remainder of the claim by the landlord is dismissed without leave to reapply due to insufficient evidence. I find the landlord is not entitled to a late fee and have not included that amount accordingly.

Based on the above, I find the landlord's total monetary claim is **\$683.08** and given that the landlord's claim had merit, I grant the landlord the **\$100.00** filing fee pursuant to section 72 of the *Act*. Therefore, the landlord's total claim with filing fee is **\$783.08**.

Tenants' claim

As mentioned above, I find the tenants have failed to comply with section 7 of the *Act* which states as follows:

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]

I find that by waiting until the tenancy ended to seek 25% compensation between a time period of January 2017 and October 2017 is not reasonable and that the tenants allowed their claim to increase by ten months before taking action to address the matter. Furthermore, sections 59(2)(b) of the *Act* requires that a claim for compensation provide sufficient particulars and I find the tenants' claim for the 25% compensation failed to include sufficient particulars and is dismissed without leave to reapply accordingly.

I will now address the tenants' combined deposits which total \$1,400.00. I find the landlord has not returned either deposit and that the amount paid by the landlord of \$1,400.00 was for the return of October 2017 rent pursuant to the 2 Month Notice served on the tenants. There is no dispute that the landlord had the tenants' written forwarding address as of October 31, 2017 as the address was on the outgoing condition inspection report dated October 31, 2017. Therefore, section 38 of the *Act* applies and states:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) **must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.**

[My emphasis added]

Based on the above, I find the landlord breached section 38 of the *Act* by failing to return the tenants' security deposit and pet damage deposit or file for dispute resolution within 15 days of October 31, 2017. The landlord did not file his application until November 20, 2017 which is beyond the 15 day time limit under section 38 of the *Act*. Consequently, I find the landlord owes the tenants **\$2,800.00** which is double the combined deposits of \$1,400.00. As the tenants' claim had merit, I also grant the tenants **\$100.00** for the recovery of the cost of the filing fees. I find the tenants' total monetary claim established is **\$2,900.00**.

Given the above, I will offset the landlord's total monetary claim of \$783.08 from the tenants' total monetary claim of \$2,900.00, which leaves the landlord owing the tenants a final amount of **\$2,116.92**.

I order the landlord to pay the tenants \$2,116.92 accordingly. Should the landlord fail to pay that amount, I grant the tenants a monetary order pursuant to section 67 of the *Act* accordingly in the amount of **\$2,116.92**.

Conclusion

Both parties have been partially successful.

The landlord has established a total monetary claim of \$783.08 which has been offset from the tenants' total monetary claim of \$2,900.00.

The landlord has been ordered to pay the balance owing by the landlord to the tenants in the amount \$2,116.92. Should the landlord fail to pay that amount, the tenants have been granted a monetary order pursuant to section 67 of the *Act* in the amount of \$2,116.92. Should the tenants require enforcement of the monetary order, the tenants must first serve landlord with the monetary order and then may file the monetary order in the Provincial Court (Small Claims) to be 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: July 5, 2018

Residential Tenancy Branch