



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FFL, MNDCL-S

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. A monetary order in the sum of \$1698 for unpaid utilities.
- b. An order to keep the security deposit/pet damage deposit.
- c. An order to recover the cost of the filing fee

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties acknowledged they had received the documents of the other party.

I find that the Application for Dispute Resolution and Notice of Dispute Resolution Hearing was sufficiently served on the Tenants as the Tenants acknowledged service of the same. With respect to each of the applicant's claims I find as follows:

Issues to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to a monetary order and if so how much?
- b. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- c. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence:

The parties entered into a one year fixed term written tenancy agreement that provided that the tenancy would start on August 1, 2017 and end on July 31, 2018. The tenancy agreement provided that the tenant(s) would pay rent of \$2300 per month payable in advance on the first day of each month.

There is another rental unit in the basement which was rented to a third party.

The Addendum to the tenancy agreement provided that the utility bills would be shared equally between each of the occupants of the building. The tenants had 5 occupants living upstairs (2 adults and 3 children) and the downstairs tenant had 3 occupants (1 adult and 2 children).

A few days later the parties agreed to an 80/20 split. This is evidenced in an e-mail dated July 23, 2017.

In September the parties varied the agreement so that there would be a 70/30 split with the Tenants making the 70% payment..

The parties agreed to an equal payment plan with the tenants paying a set amount each month.

Analysis:

The landlord provided a spread sheet indicating that the Tenants owe \$1698 for the utilities to the end of the tenancy including (Fortis Gas, BC Hydro and City Utilities).

The tenants dispute this claim on the following basis:

- They have paid the monthly payments that were agreed upon.
- The downstairs suite used significantly more hydro because he used space heaters.
- She does not understand how the utility charges could be so much more
- She would not have agreed to rent the rental unit had she been aware of that the utilities were so much more expensive than anticipated.

Monetary Order and Cost of Filing fee

I do not accept the submission of the Tenants that they do not owe anything further for utilities as they made all of the monthly payments. The parties agreed to an equal payment plan. This agreement involved making equal payments for a period of time and then at some stage there would be an accounting where the tenants would have to pay an additional sum or they would be reimbursed a sum. Based on the e-mails and text message and the oral testimony at the hearing I determined the tenants were aware there would be an accounting at some time in the future.

Further, I do not accept the submission of the tenants that they should not be required to pay additional sums because the downstairs tenant used excessive electricity by using space heaters. The tenants are bound by the agreements they enter into. With the advantage of hindsight it may be that the tenants did not make a good deal. However, they are still bound by their agreements.

I accept the evidence of the landlord that the Addendum to the tenancy agreement was varied to provide for an 80/20 split for August and a second variation for a 70/30 split thereafter. I accept parties agreed the tenants would pay 70% of the hydro, gas and city utilities. The landlord provided a spread sheet and supporting bills. I accept the evidence of the landlord that after all payments are credited the tenants owe an additional \$1698 in utility payments.

In summary I determined the landlord has established a monetary claim against the tenant(s) in the sum of \$1698 plus the \$100 filing fee for a total of \$1798.

Security Deposit

I determined the security deposit (\$600) and pet damage deposit (\$600) totals the sum of \$1200. I determined the landlord is entitled to retain this sum. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$598.

Conclusion:

I order that the landlord shall retain the security deposit and pet damage deposit totaling \$1200. I further ordered that the tenants pay to the landlord an additional \$598.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties.

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: December 06, 2018

Residential Tenancy Branch