



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR-S, FF

Introduction

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

- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. The landlord, E.O. did not attend and was unrepresented. The landlord, E.F. stated that the landlord's application could proceed in the absence of the other named landlord. Both parties confirmed that the landlords served the tenant with the notice of hearing package via Canada Post Registered Mail. The landlords stated that the tenant was served with the submitted documentary evidence via Canada Post Registered Mail on January 10, 2019. The tenant disputed the landlords claim stating that an 8 page document package was received in person on January 11, 2019. An extensive discussion on the contents of the landlord's documentary evidence took place in which the tenants described that out of 12 difference documents, the tenant only received 4. Each document was described in detail for both parties and subsequently the tenant accepted that there were no issues in proceeding with the missing documents, except for the submission of 3 out of 4 pages of the completed condition inspection report for the move-in and move-out. The landlord was unable to provide any supporting evidence of service nor any details of how this document could be relevant to the landlord's monetary claim of unpaid rent. As such, this document was excluded from consideration. Both parties confirmed that the tenant served the landlords with her submitted documentary evidence via Canada Post Registered Mail on January 10, 2019 and that the second documentary evidence package submitted late was not to the

landlords. No further issues were raised by either party. As such, I accept the undisputed affirmed testimony of both parties that both parties were served with the notice of hearing package and are deemed sufficiently served as per section 90 of the Act. As for the landlords' submitted documentary evidence, I find that other than the exclusion regarding the inspection report, the remaining documents provided by the tenant can be considered for this decision. I find that as the tenant failed to serve the landlords with the late second documentary evidence, this package shall be excluded from consideration.

Preliminary Issue(s)

The landlord's monetary claim was clarified as the monetary amount filed of \$826.00 did include the landlord's request to retain and offset the landlords' claim for \$1,089.16. This is detailed below in the landlords' clarified monetary claim. Both parties confirmed their understanding and the hearing proceeded on this basis.

During the hearing the landlord cancelled item #3 off of the monetary worksheet for \$30.36 Unpaid Utilities, Hydro costs. As such, no further action is required for this portion of the landlords' claim.

At the end of the hearing the tenant requested that a copy of the Decision be delivered via email to the tenant's advocate.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for unpaid rent and/or utilities and recovery of the filing fee?

Are the landlords entitled to retain all or part of the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on May 14, 2017 on a fixed term tenancy ending on May 31, 2018 and then thereafter on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated May 9, 2017. The monthly rent is \$1,050.00 payable on the 1st day of each month. Both parties confirmed that a total security deposit of \$525.00 was paid. Both parties agreed that the tenancy ended on September 15, 2018.

The landlords seek a clarified monetary claim of \$1,058.80 which consists of:

\$1,050.00	Unpaid Rent, September 2018
\$8.80	Unpaid Utilities, Fortis

The landlord claims that a 10 Day Notice September 1, 2018 was served to the tenant as the tenant failed to pay rent of \$1,050.00 that was due on August 31, 2018.

The tenant confirmed in her direct testimony that she vacated the rental unit on September 15, 2018 and that no rent was paid for September 2018.

The landlord also claims that outstanding utilities for Fortis of \$8.80 have not been paid by the tenant. The tenant disputes this claim. The landlord clarified that the amount owed is for the period August 3, 2018 to September 4, 2018 (pro-rated) based upon the submitted copy of the Fortis Statement with a due date of September 26, 2018 and a 1/3 share of the total utilities. The tenant argued that all utilities were paid and referred to a handwritten receipt issued by the landlord dated September 1, 2018 for \$65.50 for "Utilities". The tenant also stated that her share of utilities should be 50% of totals incurred. The landlord has argued that the receipt referred to by the tenant is for July 2018 Utilities as the Utility Invoice/Statements are sent out approximately 1 month after the utilities are incurred. The landlord also clarified that the landlord had agreed to the tenant paying only 1/3 of the total utilities after her co-tenant vacated the rental premises which would lower it from the 50% agreed to in the tenancy agreement.

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, I accept the undisputed affirmed testimony of both parties that the tenancy ended on September 15, 2018 and that monthly rent was \$1,050.00 each month. The tenant provided undisputed affirmed evidence that no rent for September 2018 was

paid. As such, I find that the landlord has established a claim for unpaid rent of \$1,050.00 for September 2018.

On the landlord's claim of \$8.80 for unpaid utilities, fortis, I find that the landlord has failed to provide sufficient evidence. The landlord relies upon the fortis statement with a due date of September 26, 2018. The tenant made no dispute over the statement, but instead referred to a hand written receipt dated September 1, 2018 for a utilities payment of \$65.50. The landlords explanation that this was for utilities from July 2018 as the statements are sent out approximately 1 month after being issued. I find that the landlords have failed to provide sufficient evidence on the payment of utilities regarding this claim and dismiss this portion of the monetary claim.

The landlord has established a total claim of \$1,050.00. The landlord having been substantially successful in the application for dispute is entitled to recovery of the \$100.00 filing fee. I authorize the landlords to retain the \$525.00 security deposit in partial satisfaction of this claim. The landlords are granted a monetary order for the balance owing.

Conclusion

The landlords are granted a monetary order for \$625.00.

This order must be served upon the tenant. Should the tenant fail to comply with this order, the order may be filed in the Small Claims Division of the Provincial Court of British Columbia.

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 24, 2019

Residential Tenancy Branch