



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, 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 and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing in person. Both parties confirmed the landlord served the tenant with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on April 3, 2019.

Discussions between the parties revealed that additional evidence uploaded into the system on May 15, 2019 by the landlord was in fact submitted in person by the tenant on May 10, 2019 both to the Residential Tenancy Branch in person and to the landlord via Canada Post Registered Mail. The landlord confirmed receipt of the evidence late, but stated that there were no issues in responding to the tenant's submissions. I allow the tenant's late evidence submission as there is no apparent bias to the landlord in doing so.

I accept the undisputed testimony of both parties and find that both parties have been sufficiently served with the notice of hearing package and the submitted documentary evidence as per section 90 of the Act.

Preliminary Issue(s)

At the outset, the landlord clarified that she wished to amend the monetary claim to include additional cost(s) incurred as part of the ongoing unpaid utilities and rent. The tenant made no submissions on this issue. I find that there is no apparent bias in allowing the landlord to amend the monetary claim to include an additional month of unpaid utilities and unpaid rent. The hearing proceeded on this basis.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, for money owed or compensation for damage or loss and recovery of the filing fee?

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 August 1, 2018 on a fixed term tenancy ending on May 1, 2019 as per a signed tenancy agreement dated August 1, 2018. The monthly rent is \$1,290.00 payable on the 1st day of each month. The tenancy agreement lists two co-tenants, E.M. and J.T.

The landlord seeks an amended monetary claim of \$10,170.64 which consists of:

\$701.17	Unpaid Utilities, Hydro
\$439.47	Unpaid Utilities, Hydro (amendment)
\$9,030.00	Unpaid Rent
\$645.00	October 2018
\$645.00	November 2018
\$1,290.00	December 2018
\$1,290.00	January 2019
\$1,290.00	February 2019
\$1,290.00	March 2019
\$1,290.00	April 2019
\$1,290.00	May 2019n (amendment)

The landlord provided testimony that a mutual agreement to end tenancy dated August 19, 2018 to end the tenancy on October 1, 2018 was signed by the co-tenant, J.T. The landlord claims the tenant, E.M. cancelled hydro utility service on September 15, 2018.

The landlord states that because of this the landlord was forced to reinstate the hydro service under the landlord's name. The landlord stated that hydro service is essential to maintain condition of the rental property during the tenancy. The landlord seeks recovery of these costs as the tenant still occupies the rental unit and has not paid any rent or utilities. The tenant, E.M. confirmed that hydro service was cancelled by him stating that his co-tenant was not paying his portion of the rent. The tenant provided undisputed testimony that no payments for utilities have been paid by the tenant to the landlord beginning September 2018. The tenant does not dispute the monetary amounts provided by the landlord for unpaid utilities. The tenant only disputes that he is responsible only for his portion (1/2) of owed utilities.

The landlord provided undisputed testimony that the co-tenant, J.T. vacated the rental premises as per the signed mutual agreement to end tenancy, but the tenant, E.M. continues to reside in the rental property. The landlord claims based upon the above noted unpaid rent that monthly rent of \$1,290.00 is owed each month as per the signed tenancy agreement. Both parties confirmed that the landlord accepted rent of \$645.00 for both October and November 2018 for which the landlord issued receipts for "Use and Occupancy Only". Both parties confirm that as of the hearing date, the tenant continues to occupy the rental property. Both parties agreed that the tenant has attempted to make rent payments to the landlord for which the landlord has refused. The landlord has stated that they are following instructions from their legal counsel. Both parties confirm based upon the above noted monetary claim for unpaid rent that the landlord has not received the monthly rent as claimed.

Both parties agreed that the signed tenancy agreement dated August 1, 2018 states in part,

Tenants: 1# J.A.T. 2# H.E.M.

Monthly Rent: \$1,290.00 per month due on the first of every month.

*First Month's rent due upfront with the damage deposit of
\$12900.00+\$645.00=\$1935.00*

Damage Deposit per individual: base \$645.00 ½ months rent \$322.50 payable in advance.

Damage deposit to be returned within 15 days after moving out, if there is no damages.

Payment as Follows:

Direct Email transfer for \$1290.00 total, payable to J.S.V.(per individual \$645.00)

[tenant names abbreviated for this decision]

Both parties confirmed that this single tenancy agreement lists two tenants with the landlord/owner.

The tenant has argued that even though the single tenancy agreement lists two tenants, the tenant is only responsible for his share of the rent for \$645.00. The tenant also argues that the mutual agreement provided by the landlord is fraudulent, but has not provided any evidence to support this claim other than his allegations.

The landlord submitted in support of these claims copies of:

- Signed Tenancy Agreement dated August 1, 2018
- BC Hydro Unpaid Utilities Summary
- BC Hydro invoice(s)
- Unpaid Rent Summary

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, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

Both parties have confirmed the amounts outstanding for utilities (hydro) and rent for the period September 2018 to May 2019.

In this case, the tenant has argued that he is not responsible for the rent portion attributed to his co-tenant. The tenant has stated that he had paid his portion of the monthly rent of \$645.00 and was not allowed to obtain a new roommate.

The landlord has presented evidence that a mutual agreement to end tenancy was signed by the landlord and the co-tenant on August 19, 2018 for October 1, 2018.

Residential Tenancy Branch Policy Guideline, #13, Rights and Responsibilities of Co-tenants states in part,

This Guideline clarifies the rights and responsibilities relating to multiple tenants renting premises under one tenancy agreement.

*A tenant is the person who has signed a tenancy agreement to rent residential premises. If there is no written agreement, the person who made an oral agreement to rent the premises and pay the rent is the tenant. **Co-tenants are two or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly responsible for meeting the terms of the tenancy agreement.** Co-tenants also have equal rights under the tenancy agreement.*

Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. *The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.*

Where co-tenants have entered into a fixed term lease agreement, and one tenant moves out before the end of the term, that tenant remains responsible for the lease until the end of the term. If the landlord and tenant sign a written agreement to end the lease agreement, or if a new tenant moves in and a new tenancy agreement is signed, the first lease agreement is no longer in effect.

Where co-tenants have entered into a periodic tenancy, and one tenant moves out, that tenant may be held responsible for any debt or damages relating to the tenancy until the tenancy agreement has been legally ended. If the tenant who moves out gives proper notice to end the tenancy the tenancy agreement will end on the effective date of that notice, and all tenants must move out, even where the notice has not been signed by all tenants. If any of the tenants remain in the premises and continue to pay rent after the date the notice took effect, the parties may be found to have entered into a new tenancy agreement. The tenant who moved out is not responsible for carrying out this new agreement.

I find based upon the direct testimony of both parties and the submission of the signed tenancy agreement that both parties have confirmed that a single agreement was made by the two tenants and the landlord. As such, the co-tenant's agreement to enter into a mutual agreement to end tenancy dated August 19, 2018 for October 1, 2018 is binding on both of the named tenants.

In this case, the landlord has presented details and evidence of unpaid rent and utilities totalling, \$10,170.64 based upon the clarified details noted above in this decision. The tenant has confirmed that no rent has been paid for those details provided by the

landlord. As such, the landlord is successful in the monetary claim for unpaid rent and utilities.

The landlord having been successful is also entitled to recovery of the \$100.00 filing fee.

Conclusion

The landlord is granted a monetary order for \$10,270.64.

This order must be served upon the tenant. Should the tenant fail to comply with the 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 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 21, 2019

Residential Tenancy Branch