



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDCL, MNRL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on November 01, 2018 (the “Application”). The Landlord applied for compensation for monetary loss or other money owed, to recover unpaid rent and for reimbursement for the filing fee.

This matter came before me for a hearing February 26, 2019 and an Interim Decision was issued on that date. This decision should be read with the Interim Decision.

The Landlord and Tenant appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. The only issue that arose was in relation to some evidence the Tenant submitted stating it was confidential to the Arbitrator. The Tenant confirmed that this had not been served on the Landlord. Pursuant to the Rules of Procedure, parties are required to serve all evidence they intend to rely on at the hearing on the other party. In my view, there are no exceptions to this. To allow the Tenant to submit evidence considered by me but not available to the Landlord would be both unfair and prejudicial to the Landlord. Therefore, I have not considered this evidence.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. The parties were told that I would only consider evidence they point to during the hearing. I have considered the evidence pointed to during the hearing and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to compensation for monetary loss or other money owed?
2. Is the Landlord entitled to recover unpaid rent?
3. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord did not seek \$6,624.38 as stated on the Application. He sought the following:

1. City utilities 2018 \$1,211.00
2. City utilities 2017 \$1,171.00
3. Hydro \$2,759.07
4. Fortis Gas \$3,944.36
5. Rent for March \$50.00 (not \$75.00 as stated in the evidence)
6. Filing fee \$100.00 (not \$200.00 as stated in the evidence)

The Landlord calculated this to be \$9,360.43. The Landlord indicated \$2,000.00 was paid by the Tenant so \$7,360.43 remained outstanding. The Landlord sought 45% of this as he stated this is what the Tenant owed for utilities.

The parties submitted different tenancy agreements as evidence. The Landlord submitted a tenancy agreement on the RTB form with the details handwritten in. It shows the tenancy was between him and the Tenant in relation to the rental unit. The tenancy started April 01, 2016 and was for a fixed term ending March 31, 2017. Rent was \$1,350.00 per month due on the first day of each month. No utilities were included. The Tenant paid a \$1,300.00 security and pet damage deposit. The agreement is signed by the Landlord but not the Tenant. This agreement includes a blank page with a handwritten note stating:

1. Tenant will pay 45% of utilities as follows:
City (water)
BC Hydro
Fortis Gas

The Tenant disagreed that this was the accurate tenancy agreement. The Tenant said she did not receive a copy of this in the evidence package. The Landlord could not point to evidence showing the tenancy agreement in particular was served on the Tenant.

The Tenant submitted a written tenancy agreement also on the RTB form. The details of this are typed and handwritten in. It is between the Landlord, Tenant and a third tenant in relation to the rental unit. The tenancy started March 15, 2016 and was a month-to-month tenancy. Rent was \$1,350.00 due on the first day of each month. Water was included. The Tenant was to pay 35% of the electricity and heat. The Tenant paid a \$650.00 security deposit and \$650.00 pet damage deposit. The agreement is signed by the Landlord and Tenant.

The Landlord disagreed that this was the accurate tenancy agreement. He acknowledged that it is his signature on page six of the tenancy agreement. The Landlord did not provide any reasonable explanation as to why his signature is on the tenancy agreement if it is not accurate. The Landlord simply stated that this is not the accurate tenancy agreement and the one he submitted is accurate. The Landlord could not explain why the tenancy agreement he submitted does not have the Tenant's signature on it.

Both parties agreed rent at the end of the tenancy was \$1,400.00. Both parties agreed the tenancy ended March 31, 2018.

The parties testified as follows in relation to the amounts claimed.

Unpaid rent for March

The Landlord testified that the Tenant allowed him to keep the security deposit and pet damage deposit for the last month of rent and this only totalled \$1,350.00 where as rent was \$1,400.00. The Landlord testified that the Tenant was \$50.00 short and still owes this amount.

The Tenant agreed she allowed the Landlord to keep the security deposit and pet damage deposit for the last month of rent and this only totalled \$1,350.00. She agreed she was short \$50.00 but submitted that she over paid for utilities and therefore does not owe the Landlord this amount.

Fortis Gas

The Landlord testified that the Tenant owed for gas pursuant to the tenancy agreement. He pointed to the gas bills submitted. The Landlord confirmed the gas bills were provided to the Tenant. The Landlord testified that the Tenant only paid \$1,950.00 for all utilities and pointed to receipts she submitted in this regard.

The Tenant did not take issue with having been provided the gas bills.

The Tenant testified that she paid more than required for utilities. She testified that she paid more than the \$1,950.00 shown in the receipts but that she could not find the receipts for the remainder of the payments.

Hydro

The Landlord pointed to the hydro bills submitted in support of his position about the amount owing.

The Tenant did not take issue with having been provided the hydro bills.

The Tenant pointed to outlines she drafted showing invoices, amounts paid and balances for utilities.

The Tenant pointed to a text message dated September of 2017 which she submitted shows she paid more than what is shown in the receipts. She testified that she never got a receipt for the \$90.00 mentioned in the text message. She testified that the Landlord did not always have a receipt book with him and so did not always issue receipts for cash payments.

In reply, the Landlord testified that he always provided the Tenant with receipts for cash payments.

City utilities

The Landlord pointed to the city bills submitted in support of his position that the Tenant owes the amount requested. He advised that he did not include the sewer costs in the amount owing.

The Tenant testified that water was included in the rent and referred to the tenancy agreement she submitted.

Evidence

The Tenant pointed to evidence submitted of bank transfers showing she transferred money to the Landlord for utilities in September and December of 2017 as well as January and February of 2018. The Landlord agreed the Tenant paid these amounts and that he did not issue receipts for these given they were bank transfers.

This hearing ran 30 minutes over the allotted hearing time. The hearing could not continue as I had another hearing at 11:00 a.m. I told the parties that if they felt they had not had enough time to present their evidence and if they wanted to adjourn and come back on another date to finish the hearing we could do that. Both parties confirmed that they did not want to adjourn and come back on another date to finish the hearing.

The Tenant did not refer to the five-page PDF of bank statements submitted February 26, 2019 and the relevance of these is not clear to me.

Analysis

Pursuant to rule 6.6 of the Rules of Procedure, it is the Landlord as applicant who has the onus to prove the claim.

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.

I find it more likely that the tenancy agreement submitted by the Tenant is the accurate tenancy agreement given it is signed by both parties where as the copy submitted by the Landlord is not. The Landlord could not explain how his signature ended up on the Tenant's copy if it is a false document as he states. Nor could the Landlord explain why

his copy of the tenancy agreement does not have the Tenant's signature on it. In the circumstances, I accept that the copy submitted by the Tenant is the accurate copy.

Given the above, I accept that water was included in the rent. I also accept that the Tenant was responsible for 35% of the electricity and heat.

Section 26(1) of the *Residential Tenancy Act* (the "*Act*") requires tenants to pay rent when it is due under the tenancy agreement unless they have right under the *Act* to withhold rent.

Section 7 of the *Act* states:

7 (1) If a...tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.

The parties agreed the Tenant failed to pay \$50.00 of March rent. The Tenant said she did not pay full rent because she had overpaid for utilities. This is not a basis to withhold rent under the *Act*. If the Tenant believed she overpaid for utilities, there were other avenues open to her to address this. I am satisfied the Tenant failed to pay \$50.00 of March rent as required by the tenancy agreement. The Landlord is entitled to recover this amount.

In relation to gas, the Landlord submitted bills showing \$3,944.36 in total was due. I have accepted that the Tenant was responsible for 35% of this which equals \$1,380.53.

In relation to hydro, the Landlord has only submitted bills showing \$2,699.38 in total was due. I do not see where the remaining amount is shown in the bills provided. I have accepted that the Tenant was responsible for 35% of this which equals \$944.78.

In relation to the city water bills, I have accepted that water was included in the rent and therefore do not find the Landlord entitled to compensation for these.

I find the Tenant only owed \$2,325.31 in total for utilities. The receipts submitted by the Tenant show she paid \$1,950.00 for utilities. I also accept from the bank statements submitted that the Tenant paid the Landlord a further \$700.00 for utilities for a total of \$2,650.00. Therefore, I am not satisfied the Tenant owes the Landlord any further for utilities.

Given the Landlord was partially successful in this application, I award him reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In summary, the Tenant must pay the Landlord \$150.00. The Landlord is issued a Monetary Order in this amount.

Conclusion

The Tenant must pay the Landlord \$150.00. The Landlord is issued a Monetary Order in this amount. If the Tenant does not pay the Landlord \$150.00, this Order must be served on the Tenant. If the Tenant does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: May 06, 2019

Residential Tenancy Branch