



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SINCERE REAL ESTATE SERVICES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL MNDCL-S MNRL-S

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;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement 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; and,
- authorization to recover the filing fee for this application pursuant to section 72.

Both the landlord and tenant K.D. attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses and cross-examine witnesses. Tenant R.W. attended the original hearing but he did not attend this reconvened hearing. Since the parties attended the hearing, I find that the parties were both sufficiently served pursuant to section 71(2)(c) of the *Act*.

At the outset of the hearing the applicant landlord testified that all issues had been resolved prior to the hearing except for the landlord's claims for reimbursement of water utility expenses and the filing fee. Accordingly, I dismissed all of the landlord's applications herein, except for landlord's claims for reimbursement of utility expenses and the filing fee, pursuant to section 62(4) of the *Act* as these claims no longer disclosed a dispute that may be determined under the *Act*.

Issue(s) to be Decided

Is the landlord entitled to reimbursement of utility expenses pursuant to section 67 of the *Act*?

Is the landlord entitled to reimbursement of the filing fee pursuant to section 72 of the *Act*?

Background and Evidence

The tenancy started on April 1, 2017. The rent was \$4,000.00 per month and the tenant paid a \$2,000.00 security deposit. The tenant agreement included an addendum which stated that the tenant must pay "...water, hydro, gas, cable, phone and internet."

The landlord claims that the tenant owes \$1,700.15 in unpaid water utility expenses. The landlord provided multiple water utility statements including statements for the following billing periods:

<u>Billing Period</u>	<u>Amount</u>
April 1, 2107 to June 30, 2017	\$290.95
July 1, 2017 to September 30, 2017	\$1,015.93
October 1, 2017 to December 31, 2017	\$882.79
January 1, 2018 to March 31, 2018	\$1,381.16
April 1, 2018 to June 30, 2018	\$891.43
July 1, 2018 to September 30, 2018	\$1,378.51
October 1, 2018 to December 31, 2018	\$408.02

Tenant K.D. testified that she has overpaid the utilities and she does not anything to the landlord.

The tenant testified that property had a water leak and that she should not be charged for excessive water bills since pipe maintenance was the landlord's responsibility. The tenant noted that multiple water utility invoices stated that the water consumption seemed high and the statements recommended checking for leaks. The landlord testified that the water utility bills were approximately \$450.00 per billing quarter for four occupants when the landlord previously occupied the rental unit. The tenant testified that four to five persons resided in the rental unit during the tenancy.

The tenant testified that after deducting for excess water use from the water leak she has actually overpaid the utility water expenses.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, the onus is on the landlord to prove entitlement to a claim for a monetary award. The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

Section 32 of that *Act* states that:

- 32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that
- (a) complies with the health, safety and housing standards required by law, and
 - (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

I find that the provision and maintenance of a water supply to the rental unit is a 'health, safety and housing standards required by law'. As such, I find that the landlord has the responsibility to maintain the water supply to rental unit.

I find, on the balance of probabilities, based upon the testimony of the parties and the water utility statements, that there was a water leak at the property. The water utility statement showed water use much higher than the amount incurred by the landlord in the same property with a similar sized household. In addition, the water utility statements themselves warn of a abnormal usage and a possible leak.

I find that the landlord has not provided sufficient evidence to prove that the water utility expenses claimed by the landlord related to water consumption by the tenant rather than a water leak which was the landlord's responsibility. Since the landlord has the burden of proof and the landlord has failed to produce sufficient evidence to satisfy the burden of proof, the landlord's application for reimbursement of the water utility expenses is dismissed.

Since the landlord has not been successful in its application for reimbursement of the water utility expenses, the landlord's application for reimbursement of the filing fee is dismissed pursuant to section 72.

Conclusion

The landlord's application for reimbursement of the water utility expenses is dismissed.

The landlord's application for reimbursement of the filing fee is dismissed.

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: July 02, 2019

Residential Tenancy Branch