



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BOLLD REAL ESTATE MANAGEMENT
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* ("Act") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- an order authorizing the landlord the recovery of the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord was represented by an agent. The tenants represented themselves. The parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for losses arising out of this tenancy?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to the recovery of the filing fee?

Background and Evidence

The agent gave the following testimony. The agent testified that the six month fixed term tenancy began on April 1, 2019 but ended one month early on August 31, 2019. The agent testified that the monthly rent of \$3650.00 was due on the first of each month. The agent testified that the tenants paid a security deposit of \$1850.00 which the landlord still holds in trust. The agent testified that the tenants ended the tenancy early and therefore are responsible for the loss of rent for September 2019 of \$3650.00, the liquidated damages of \$1095.00 as per the tenancy agreement and the recovery of the \$100.00 filing fee for this application for a total claim of \$4845.00.

KG gave the following testimony on behalf of the tenants. KG testified that they were told hot water was included with the rent as per the tenancy agreement. KG testified that they were told by the landlord to put the electricity in their name. KG testified that after noticing a spike in their usage, he brought this to the attention of the agent within a few days of moving in. KG testified that he was unaware that the hot water was electrically heated and that he would have to bear that cost.

KG testified that he and the agent came to an understanding that he would be reimbursed \$26.00 each month for the electricity to heat the hot water however it quickly became apparent that it wasn't a reasonable solution. KG testified that throughout the application and viewing process, he was under the belief that hot water was included. KG testified that despite numerous conversations and some emails, the landlord and their agents lacked professionalism or attention to this matter and decided to end the tenancy.

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 provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The parties are at odds as to who was responsible for paying the hot water costs for this unit. The tenants submit that the tenancy agreement is clear that hot water is included.

The agent agreed that the tenancy agreement submitted by the tenants is authentic and reflects the original agreement. The agent submits that since the parties came to an agreement to reimburse the tenants, the landlord has not breached a material term of the tenancy and they should be entitled to the monetary claims as sought.

The tenancy agreement is a foundational document for a tenancy. Parties rely and conduct themselves in accordance with the clauses and terms of such an agreement. The tenancy agreement clearly has the box for hot water “checked off” as included. The agent’s submission that the electrical portion of the bill would be reimbursed each month is ambiguous, onerous, and simply illogical. In addition, there wasn’t a clear addendum to address the cost splitting of hydro to the tenancy agreement. I find that the landlord did not meet the contractual obligation of including hot water, accordingly; I find that the landlord is in breach of a material term of the tenancy.

Section 45 of the Act addresses the issue before me as follows.

Tenant's notice

45 (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

As I find that the landlord has not complied with a material term of the tenancy, the tenants were at liberty to end the tenancy with proper notice; which they did. Based on all the above and on a balance of probabilities, I dismiss the landlord’s application in its entirety without leave to reapply. The landlord is to return the deposit to the tenants.

Conclusion

The landlord's application is dismissed in its entirety without leave to reapply. The landlord is to return the security deposit to the tenants. The tenants are granted a monetary order of \$1825.00 pursuant to section 67 of the Act.

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 14, 2020

Residential Tenancy Branch