



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDCL-S
 FFT, MNDCT, MNSD

Introduction

This hearing convened as a result of cross applications. In the Landlord's Application for Dispute Resolution, filed on November 4, 2019, the Landlord requested monetary compensation from the Tenants for unpaid utilities, authority to retain the Tenant's security deposit, and to recover the filing fee. In the Tenant's Application for Dispute Resolution, filed on November 11, 2019, the Tenant requested return of their deposits and to recover the filing fee.

The hearing was conducted by teleconference at 9:30 a.m. on December 19, 2019. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The parties confirmed their email addresses during the hearing as well as their understanding that this Decision would be emailed to them.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenants?
2. What should happen with the Tenants' security deposit?
3. Should either party recover the filing fee?

Background and Evidence

In support of her claim the Landlord provided documentary evidence as well as testimony. A copy of the residential tenancy agreement was provided in evidence and which indicated that this tenancy began April 1, 2018 and a monthly rent payment of \$1,400.00 per month. The agreement included an Addendum which further provided that the Tenants were to pay 66% of the utilities, including a monthly sum of \$50.00 towards the quarterly water bills. The Tenants also paid a \$700.00 security deposit and a \$150.00 pet damage deposit.

The Landlord stated that the tenancy ended October 15, 2019.

The Landlord sought monetary compensation for unpaid utilities in the amount of \$989.82 which represented the amounts she claimed was owing by the Tenants at the end of the tenancy.

In support of her claim the Landlord filed a Monetary Orders worksheet in which she claimed the sum of \$801.00. The Landlord also provide an excel spreadsheet which indicated she sought the sum of \$772.67. On yet another document filed by the Landlord, she wrote that she sought the sum of \$68.00 for a city utility account, which was calculated by determining the 66% of the total \$328.29 less the sum of \$150.00.

The Landlord failed to file the utility bills in evidence before me. When I brought it to her attention that the documents filed did not support the \$989.82 claimed, the Landlord acknowledged she had difficulty sorting out what amounts were owing.

The Landlord stated that the Tenants were not consistent in paying their utilities and at times underpaid such that at the end of the tenancy the Tenants owed \$772.67. The Landlord testified that she received a final invoice from B.C. Hydro wherein the final amount was provided and included in the amended excel spreadsheet.

The Landlord also stated that in addition to the amount claimed, she estimated the Tenants will also owe approximately \$33.33 for the water bill which will be rendered in January 2020.

The Landlord testified that it was a “cluster” as at times she had difficulty keeping track of what was paid and what was owing. She also noted that she also had a high-risk pregnancy which impacted her ability to deal with these financial issues.

The Tenant, K.K., responded to the Landlord’s claim as follows. She confirmed the Tenants disputed the amount claimed by the Landlord. She stated that she has had a chance to review the Landlord’s documentary evidence and was confused by the amounts claimed. That said, she stated that she believes, based on her calculations, that the amount owing to the Landlord is actually \$394.31. She confirmed that she went through all the e-transfers they sent to the Landlord, subtracted the amounts owing for utilities and arrived at this figure.

The Tenant testified that she never received the B.C. Hydro and Fortis bills from the Landlord during the tenancy; rather than the Landlord simply sent a text message with the amounts they were to pay and the Tenants paid the amounts requested. She confirmed that since the tenancy ended she has had a chance to review the summaries provided by the Landlord and, based on her review, came to the figure of \$394.31 owing. She further confirmed she was agreeable to paying this amount to the Landlord.

The Tenant also noted that the Landlord often forgot to subtract the \$50.00 per month payment they were making pursuant to the Addendum towards the water bill such that her figure was inflated. The Tenant also stated that the Landlord was disorganized and provided the example of the April water bill which she stated came to the rental unit, was due in May, but was not picked up by the Landlord until June.

The Tenant stated that she felt bad that the Landlord had a high-risk pregnancy, but she felt the Landlord was not managing these financial matters very well.

The Tenants sought return of their security and pet damage deposit paid. She confirmed that they provided the Landlord with their forwarding address on October 26, 2019. The Tenant stated that they did not authorize the Landlord to retain any amounts of the deposits.

Analysis

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at:

www.gov.bc.ca/landlordtenant.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

The Landlord claims the Tenants did not pay their share of the utilities as required by the tenancy agreement and Addendum. The Landlord failed to provide copies of the utility invoices in evidence and instead provided an excel spreadsheet setting out the amounts she claims were outstanding. Notably, the amount claimed by the Landlord did not match the amounts indicated on the documents she provided in evidence.

I accept the Tenant's testimony that the Landlord did not provide copies of the electrical invoices to the Tenants when she requested payment. Had the actual invoices been provided to the Tenants when they were issued, I expect the confusion as to what was owing would have been lessened and the accounts kept current. The Tenant was equally confused by the documents provided by the Landlord during the hearing, but went through the amounts requested, compared her own banking records and submitted that the amounts owing were much less than the amount claimed by the Landlord.

The Landlord admitted she had difficulty managing the rental finances due to her high-risk pregnancy. The Tenant testified that at times the Landlord forgot to deduct the monthly \$50.00 contribution to the water bill and was late paying the utility bills. As I did not have the benefit of those bills to review it is not clear if any amounts owing include late fees, which may not be the responsibility of the Tenants.

As noted, the Landlord bears the burden of providing her claim on a balance of probabilities. After consideration of the evidence filed and the testimony of the parties, I find the Landlord has failed to meet this burden and has provided insufficient evidence to support her claim the Tenants owe the sum of \$989.82 for outstanding utilities.

Despite the insufficiency in the Landlord's evidence, the Tenants concede some amount is owing to the Landlord for utilities. I therefore award the Landlord the agreed upon sum of \$394.31 for outstanding utilities.

As the parties have enjoyed divided success, I find they should each bear the cost of their filing fee.

Pursuant to sections 38 and 72 of the *Residential Tenancy Act*, I authorize the Landlord to retain the \$394.31 from the Tenants' security and pet damage deposit towards the amounts awarded and I order the Landlord to return the balance of \$455.69 to the Tenants. In furtherance of this I grant the Tenants a Monetary Order in the amount of **\$455.69**. This Order must be served on the Landlord and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

Although not at issue before me, the parties are reminded that they may not contract out of the *Residential Tenancy Act*. I note that the tenancy agreement and addendum include clauses regarding a three-month probationary period, and mechanisms for ending the tenancy which may not comply with the *Act*. A tenancy may only be ended

in accordance with the *Residential Tenancy Act* and the parties are encouraged to familiarize themselves with Part 4 of the *Act*.

Conclusion

The Landlord is entitled to the sum of \$394.31 for outstanding utilities. As the Landlord continues to hold the Tenants' security and pet damage deposit, she may retain that sum from the deposits and must return the balance to the Tenants.

The Tenants are granted a Monetary Order in the amount of **\$455.69**.

Each party shall bear the cost of their own filing fee.

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 2, 2020

Residential Tenancy Branch