



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, OPR, MNR, MND, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the “Act”), for an order of possession, a monetary order for unpaid utilities, for damages to the unit and for an order to retain the security deposit in partial satisfaction of the claim.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Preliminary and procedural matters

At the outset of the hearing, the parties were informed that although, I the Arbitrator have the same surname as the tenant. I do not know or have any personal relationship with the tenant.

At the outset of the hearing the parties were informed that I would not consider any amendments to the original application. The amendments are not related to the original application and they were not filed within the statutory limit. I find it would be unfair and prejudicial to the respondent. I will only consider the issues in the original application filed on November 18, 2019.

At the outset of the hearing the parties agreed the tenant vacated the rental unit on November 30, 2019. Therefore, I find it not necessary to consider the landlord’s application for an order of possession.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid utilities?

Is the landlord entitled to monetary compensation for damages?

Background and Evidence

The parties agreed that the tenancy began on July 15, 2019. Rent in the amount of \$1,500.00 was payable on the first of each month. The tenant paid a security deposit of \$750.00. The tenancy ended on November 30, 2019. The parties agreed they did not enter into a written tenancy agreement.

The landlord claims as follows:

a.	Unpaid utilities	\$ 978.00
b.	Furnace damage	\$ 750.00
c.	Filing fee	\$ 100.00
	Total claimed	\$1,828.00

Unpaid utilities

The landlord testified that the tenant never paid the utilities during their tenancy. The landlord seeks to recover the cost of the utilities in the amount of \$978.00.

The tenant testified that they never agreed to pay utilities for the rental unit as they were included in the rent.

The advocate for the tenant stated that the first time the landlord stated anything about the utilities was in a 10 Day Notice to End Tenancy, issued in November 2019.

Furnace damage

The landlord testified that the tenant never notified them that the furnace was not working. The landlord stated that after the tenant vacated, they found the pilot lite was out and the rental unit filled with gas. The landlord stated that the plumber has found that the pilot lite was corroded. The landlord seeks to recover the cost of \$750.00.

The advocate stated that the landlord was notified that the furnace was not working by registered mail, which was refused by the landlord. The advocate stated the landlord has a pattern of not accepting service.

The advocate stated that it would be impossible for the landlord to make such a claim in their original application as the tenancy had not ended.

The landlord responded that they knew there was a problem as they saw the tenant bring in electrical heaters. The landlord stated that was the cost they paid to have the furnace serviced before the tenant moved in.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or 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. In this case, the landlord has the burden of proof to prove their 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.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant 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.

Unpaid utilities

In this case, the parties did not enter into a written tenancy agreement, which would indicate what was included in the rent.

The evidence of the landlord was utilities were not included in the rent. The evidence of the tenant was that they were included in the rent.

I find without a written tenancy agreement, or any other evidence from the landlord to prove there was an agreement for the tenant to pay the utilities, I find the landlord has not met the burden of proof. Therefore, I dismiss this portion of the claim.

Furnace damage

In this case, I find the landlord's claim to recover the cost of the furnace servicing or repair that was incurred prior to the tenant moving in to the premise unreasonable. Simply because the pilot lite went out during the tenancy and a repair was necessary because the pilot lite mechanism was corroded does not entitle the landlord to claim for cost of the furnace repair or servicing prior to the tenancy commencing. Therefore, I dismiss this portion of the landlord's claim.

The landlord's claim is dismissed. The landlord is not entitled to recover the cost of the filing fee from the tenant.

The landlord's application was filed prior to the tenancy ending. I have no evidence before me, if the landlord received the tenant's forwarding address in accordance with section 38 of the Act. Therefore, I decline to issue an order for the return of the security deposit.

The tenant is a liberty to make an application for the return of their security deposit, if the landlord has not complied with section 38 of the Act, after the landlord has received the tenant's forwarding address.

Conclusion

The landlord's application 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: January 09, 2020

Residential Tenancy Branch