



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, FFL

Introduction

This hearing deal with a landlord's application against the tenants for recovery of unpaid utilities. Both parties appeared or were represented at the hearing.

At the outset of the hearing I confirmed the landlord had sent her proceeding package that included one piece of evidence, a utility bill, to the tenants via registered mail.

The tenant had uploaded a response the day of this hearing but did not serve it upon the landlord. I informed the parties that I would not admit his materials into evidence and he would be given the opportunity to provide his position orally so that the landlord is privy to it.

Issue(s) to be Decided

Has the landlord established an entitlement to an award in the amount sought for unpaid utilities?

Background and Evidence

Both parties agreed there was a written tenancy agreement executed by the parties but it was not provided for my review.

The landlord initially testified the tenancy started in mid-July 2017 but changed her testimony to say mid-July 2018. The tenant testified the tenancy started on July 15, 2018. The landlord acknowledged that she did not have the tenancy agreement before her for this proceeding.

Both parties agreed the tenants were required to pay rent of \$3000.00 on the first day of every month and the tenants had paid a security deposit of \$1500.00.

The parties provided consistent testimony that the tenancy ended on August 31, 2019.

By way of this Application for Dispute Resolution, the landlord seeks to recover \$398.40 from the tenants toward the final water and sewer bill.

I noted that the landlord was not seeking authorization to deduct the unpaid utilities from the security deposit and I enquired as to its disposition. The landlord testified that the tenant authorized her to make deduction for damage to the property and she refunded the balance of the security deposit to them before she received the subject utility bill. I asked when the landlord partially refunded the security deposit and how much she refunded. The landlord indicated she did not have this information before her.

The tenant testified that they did not authorize the landlord to make deductions from the security deposit and she withheld approximately \$1000.00 of their security deposit and refunded approximately \$500.00.

I informed the parties that if there remains a dispute concerning the partial refund of the security deposit and whether the landlord had been duly authorized by the tenants to make deductions, the tenants may seek resolution of that matter by filing their own Application for Dispute Resolution.

As for the utility bill in question, the landlord testified that she received a utility bill in the approximate amount of \$600.00 after the tenancy ended so she pro-rated the period of time the tenancy was in effect in seeking the amount claimed. The landlord did not have the utility bill before her for the hearing. I noted that the landlord had submitted a water and sewer bill in the sum of \$555.23 for the period of July 1, 2019 through September 30, 2019 and there was a calculation written on the bill indicating the landlord's claim represented 66 of the 92 days in this billing cycle.

The landlord testified that she had sought payment from the tenants for the above described bill but they "refused to pay it". When I asked the landlord what their specific response was, she stated they just ignored her requests for payment.

The tenant testified that the tenants were required to pay for water and sewer they consumed during their tenancy but that starting April 5, 2019 through to the end of the tenancy an excessive amount of water was used by the landlord in her landscaping

project. The tenant submitted that when water consumption goes up, so does the sewer charge and the tenants are not responsible for water and sewer charges pertaining to the landlord's landscaping project. The tenant acknowledged that they did consume water and sewer in July 2019 and August 2019; however, the cost of this consumption would be offset by the increased water and sewer bill they paid for the previous quarter.

The tenant testified that they had responded to the landlord's request for payment of the utility bill in email exchanges they had and they informed her of their position.

Neither party had provided me with a copy of the communication they had with respect to the utility bill.

The landlord acknowledged that the sprinklers were broken and she undertook a "small" landscaping project but the landlord pointed out the tenants had a family of six.

As documentary evidence for this proceeding, I was provided a copy of the subject utility bill which I have reviewed and considered in making this decision.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. In this case, the landlord is the applicant and has the burden to prove her entitlement to the amount sought. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

The obligation to pay utilities, or the inclusion of utilities in rent, is a term that is to be set out in the tenancy agreement. Both parties acknowledged there was a written tenancy agreement that had been executed but it was not provided to me for review by either party. As pointed out by the tenant, the landlord has the burden to prove her entitlement to compensation and it was readily apparent to me during the hearing the landlord had come to the hearing woefully prepared.

The tenant did acknowledge that under the tenancy agreement the tenants were required to pay for the water and sewer they consumed during their tenancy but they are not obligated to pay for water and sewer charges pertaining to the landlord's use during her landlord's landscaping project at the property. In the absence of a copy of the written tenancy agreement, and the landlord's failure to have a copy of the tenancy agreement during the hearing so that she may read the relevant term aloud, I find it is not sufficiently clear as to whether the tenants were required to pay for their consumption of water and sewer or all of the consumption at the property during the tenancy.

The tenant also pointed out that he paid an increased water and sewer bill for the previous quarter and that should approximately offset the water and sewer consumed by the tenants in the months of July 2019 and August 2019. In making her Application for Dispute Resolution, I note the landlord submitted the tenants had paid the water and sewer bills for the previous quarters and I accept that the tenants paid the water bill for the period of April 2019 through to June 2019. When I look at the utility bill provided as evidence by the landlord, I note that in the lower right hand corner is a graph depicting usage. In the graph it is very apparent that water usage increased greatly starting in the quarter of April – June 2019 and was even higher for the quarter of July 2019 – September 2019. As such, I find the tenant's position has merit.

Overall, I find the tenant presented a reasonable basis for me to have considerable doubts as to the landlord's entitlement to recover the amount sought by the landlord; and, given the landlord's burn of proof and lack of evidence, such as the tenancy agreement, I dismiss the landlord's claim against the tenants.

Conclusion

The landlord's claims against the tenants 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: May 15, 2020

Residential Tenancy Branch