



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, FFL

Introduction

The landlord filed an Application for Dispute Resolution (the “Application”) on February 21, 2020 seeking an order to recover money for unpaid rent and utilities, and the filing fee for the Application. The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on May 22, 2020. In the conference call hearing I explained the process and provided both parties the opportunity to ask questions.

The tenant and the landlord both attended the hearing, and I provided each with the opportunity to present oral testimony. In the hearing, both parties confirmed they received the evidence prepared by the other and had the opportunity to review that material. On this basis, the hearing proceeded.

Preliminary Matters

The landlord provided a copy of a previous Arbitrator decision from the hearing of the tenant’s earlier application in this matter. The landlord referred to the decision as rationale for their submission in this present hearing.

While findings were made by a previous Arbitrator in this matter, I am not bound by those findings here. I distinguish the decision on its face as being a hearing of a matter brought forward by the tenant; in the matter before me, the landlord is the Applicant. As such, the burden of proof lies on the opposite party here. Additionally, the previous decisions, with its findings therein, was made under different grounds for dispute under the *Act*.

The landlord made a claim for two separate items in their Application: the filing fee they paid for in the previous hearing; and costs from BC Hydro.

The landlord conceded the amount for responding to the tenant's prior Application is not something that is reimbursed by the *Act* depending on outcome. As such, I amend the landlord's application with their consent to exclude this portion of their claim.

Similarly, they provided that the amount they claimed for one chief utility in the contract was incorrect. In the hearing they subtracted an amount already paid; therefore, I have amended this monetary portion of the claim for BC Hydro to show the result after the subtraction. I consider the merits of the claim -- based on this amended amount -- below and focus on the specific amount there. Both parties were present in the hearing and agreed to this claimed amount as accurate, prior to my determination of where the responsibility for it shall lie.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for compensation pursuant to section 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this Application pursuant to the *Act*?

Background and Evidence

Each party agreed there was a tenancy agreement in place for the tenancy that began on September 1, 2019. A copy was not provided for this hearing. The landlord provided this document was signed by the parties on September 4, 2019. The monthly rent was \$1,685.00 payable on the first day of each month. The tenants paid a security deposit of \$842.50 on August 12, 2019 prior to moving in.

The landlord stated in the hearing that utilities were not included in the rent. The tenant confirmed this in the hearing.

The tenant provided their statement in the hearing that they never actually moved in to the unit, though items were present in the unit at the very start of the tenancy. By September 7, 2019 they ended the tenancy. The tenant stated that they "wrote a letter"

to the landlord on September 5, 2019; however, neither party submitted a copy of this letter for the hearing.

The landlord stated in the hearing that, after the end of the tenancy, they revisited a list they had of prospective tenants for September. The earliest they could manage with new tenants to re-rent the unit was November 1, 2019.

As noted above, the landlord submitted a previous Arbitrator decision dealing with this tenancy and submits that it stands as proof that the tenants did not provide adequate notice to end the tenancy. This means, in the landlord's submission, that an award for the October rent amount is in order. Additionally, there are remaining utility costs from September and October that the landlord claims for reimbursement.

The landlord's claim with reference to dollar amounts is as follows: \$1,685.00 for October rent; \$54.24 Hydro; and \$98.41 Fortis Gas Costs. The tenant also submitted copies of the same bills submitted as evidence by the landlord.

The tenant questioned the breadth of the claim where new tenants had moved into the unit by October 26, 2019. They drew this date from the included copies of bills the landlord provided as evidence, that which shows a transfer of the utility cost to these new tenants.

Analysis

Under section 7 of the *Act*, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to section 67 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**

4. Steps taken, if any, to mitigate the damage or loss.

The *Act* section 45(1) gives the provision for a tenant ending a tenancy:

A tenant may end a periodic 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 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.

The tenancy agreement between the landlord and tenant began on September 1, 2019. I find as fact that the tenant ended the tenancy immediately by giving notice to the landlord on September 5, 2019. The tenant stated that their belongings were out of the unit by September 7, 2019. This is insufficient notice by timeline set in section 45(1)(a) and thus in violation of the *Act*.

The landlord has illustrated their efforts at obtaining new tenants to re-rent the unit. This did not happen by the beginning of October. The chief means by which the landlord undertook to obtain new tenants was by the previous contacts they had established prior to renting to the tenant in September. I find revisiting those contacts to gauge their ongoing interest is reasonable in these circumstances; indeed, this is how the landlord sustained renters for the following month of November. I find there was a loss of the October rent; moreover, I find the landlord made the effort to minimize that loss by obtaining new tenants as quickly as possible.

For these reasons, I award the landlord the rent for the month of October, with October 31, 2019 being the earliest end of tenancy that the tenant was legally bound to without a mutual agreement in place.

For the utilities, I find the rights and obligations of the tenancy agreement continued up until the effective end of the tenancy on October 31, 2019. This includes the payment of utilities, which the landlord stated is not included in rent. By the tenants not being present, the landlord bore these costs in their absence, in a scenario that is not permitted by the *Act*. I so award the landlord compensation for these utility amounts as presented in the evidence.

For the reasons above, I find the tenants must pay the landlord the amounts of compensation the landlord makes for the rental amount and utilities.

The *Act* section 72 grants me the authority to order the repayment of a fee for the Application. As the landlord was successful in their claim, I find they are entitled to recover the filing fee from the tenants.

Conclusion

I grant a monetary order to the landlord in the amount of \$1,937.65 which includes: \$1,685.00 for October rent; \$54.24 Hydro; and \$98.41 gas; and the \$100.00 filing fee. This monetary order must be served on the tenant. Should the tenant fail to comply with this order the landlord may file it in the Provincial Court (Small Claims) and have it enforced as an order of that court.

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: June 10, 2020

Residential Tenancy Branch