



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNRT, RR, CNL, FFT**

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

A monetary order for the cost of emergency repairs to the rental unit pursuant to section 33;

An order for a reduction of rent pursuant to sections 32 and 62;

An order to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property pursuant to section 49; and

Authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant was represented at the hearing by his agent/son RC. For ease of reference, the agent/son is referred to as the tenant throughout this decision. The landlord attended the hearing. As both parties were in attendance, service of documents was confirmed. The landlord confirmed receipt of the tenant's application for dispute resolution and the parties acknowledged the exchange of evidence and stated there were no concerns with timely service of documents. Both parties were prepared to deal with the matters of the application.

Preliminary Issue

At the commencement of the hearing, the tenant acknowledged he had no documentary evidence to support his application seeking a monetary order for emergency repairs. He advised me he is not pursuing this portion of his application and wished to 'drop' it. The landlord was not averse to the tenant 'dropping' this portion of his application. I dismiss this portion of the tenant's claim without leave to reapply.

Settlement Reached

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. I advised the

parties on several occasions that there is no obligation to resolve the dispute through settlement and that if either party did not wish to resolve this matter through settlement, I was prepared to make a decision based on the evidence before me. During the hearing the parties discussed the issue of disputing the Two Month Notice to End Tenancy for Landlord's Use. Both parties agreed to the following final and binding settlement of that issue.

1. The parties agree that the tenancy will end at 1:00 p.m. on September 1, 2020 by which time the tenant and any other occupant will have vacated the rental unit.
2. The landlord will return one month's rent to the tenant in the amount \$600.00 by August 18, 2020 in the spirit of complying with section 51 of the Act.
3. The rights and obligations of the parties under the *Act* continue until the tenancy ends.
4. The tenant's right to seek compensation under section 51(2) under the Act is retained.
5. The Two Month's Notice to End Tenancy for Landlord's Use is cancelled and of no further force or effect.

Both parties testified at the hearing that they understood and agreed to the above terms, free of any duress or coercion. Both parties testified that they understood and agreed that the above terms are legal, final, binding and enforceable, which settles this aspect of the dispute.

Issue(s) to be Decided

Is the tenant entitled to compensation for a rent reduction?

Can the tenant recover the filing fee?

Background and Evidence

At the commencement of the hearing, pursuant to rules 3.6 and 7.4, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony. In accordance with rule 7.14, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The

principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The landlord gave the following testimony. The rental unit consists of a cottage located on the former site of a campground. The landlord's family purchased the campsite in 1971 and the tenant began living in the cottage in 2003 as a caretaker of the campsite facility. The campsite had already been decommissioned, however there are electrical RV site hookups on the property that the family uses occasionally for storing their trailers in the winter and for recreation in the summer months.

When the tenant moved into the rental unit, no tenancy agreement was signed. The rent was set at \$600.00 per month and no security deposit was taken. A verbal agreement was struck whereby the landlord would pay for fresh water, but the tenant would pay for the electrical/hydro facility. The tenant was responsible for paying the hydro as the bill was registered in the tenant's name. The landlord testified that the tenant began to complain about the landlord's use of electricity when they started storing their trailers on the former campsites. The landlord testified she gave the tenant a combination of cash payments and reductions in rent for the use of electricity. No receipts were issued and there is no written record of payments.

Date	Amount	For
July 2016	\$150.00 cash	Hydro for summer of 2016
July 2017	\$150.00 cash	2017 hydro
August 2017	\$150.00 cash	More 2017 hydro
January 1, 2019	Rent reduction of \$250.00	2018 hydro
May 2019	\$80.00 cash	Extra trailer winter storage for winter 2018/2019
January 2020	\$200.00 rent reduction	Hydro for 2019
February 2020 to date	\$40.00 per month rent reduction	2020 hydro useage

The landlord testified the cash payments and rent reductions were made based on the tenant's estimates and varied year by year. In 2018, the landlord was given access to the hydro accounts and based on an analysis of these accounts the landlord submits that she has more than compensated the tenant for hydro, given that he spends approximately \$1,200.00 per year on hydro.

The tenant gave the following testimony. He used to live on the property with his father. Over the years, the landlord added more trailers to the property. Originally, the landlord would not store the trailers there over the winter, but gradually more and more of them were being stored there, dramatically increasing the usage of the electricity which he was paying for. The landlord acknowledges there were 3 there in the winter of 2017/2018, and now a 4th was added in the winter of 2019.

There was no written agreement regarding what percentage of the hydro bill was to be paid by the landlord to the tenant, since in the beginning it was only done in the summer. Now, since the landlord began storing trailers there in the winter, his electricity bills went up exponentially because the landlord runs heaters, dehumidifiers, fridges and other electronics all year round. The landlord argues that the verbal agreement between the parties gives the landlord an advantage because the landlord gets to use the electricity at the tenant's expense. The tenant gives the following breakdown of what payments were made for landlord's use of electricity:

Date	Amount	For
2016	\$75.00	For 2015 hydro
2016, 2017	Zero	
Jan. 1, 2019	\$250.00	For 2018 hydro
Jan. 1, 2020	\$200.00	For more 2018 hydro
Feb. 1, 2020 onward	\$40.00 per month rent reduction	To go towards usage in 2019.

To support his application, the tenant provided a document entitled '*landlord's use of hydro*'. While he does not provide copies of the hydro bills as reference, the tenant states hydro from February 10 to April 10 was \$91.71 when he intermittently shut off the power to the trailers. From April 10 to June 10, it was \$228.25 with power restored. The tenant seeks to recover \$55.00 per month for the first 8 months of 2020 until the date the tenancy ends, totalling \$440.00. The tenant also seeks an additional \$200.00 for the 'balance owing for utilities from 2019.'

Analysis

Section 7 of the Act states: If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

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.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, 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.

Here, the tenant relies on his interpretation of a verbal agreement made between his father, the actual tenant in this proceeding, and the landlord. It is important to note that there was no written agreement between the parties regarding the arrangement made for the landlord to compensate the tenant for their use of the electricity. Unfortunately for the tenant, this lack of a formal agreement prevents the tenant from proving that the compensation already provided by the landlord for the use of the electricity isn't adequate. As the onus falls on the applicant to prove their claim, I find there is insufficient evidence to satisfy me that a loss exists, point 1 of the 4-point test.

I also find the tenant unable to satisfy me there was a violation of the *Act*, regulations or tenancy agreement, point 2 of the 4-point test. There is no section of the *Residential Tenancy Act* or regulations that requires a landlord to compensate a tenant for hydro when the landlord stores their trailer on the property. There is no tenancy agreement for me to determine whether a term has been violated. While I recognize that both parties acknowledge there was an exchange of money from the landlord to the tenant for the electricity; both parties also admit that the amount of compensation or means to determine what was owed was never formalized. Immediately, when he felt he may have been taken advantage of for paying the hydro bill while the landlords used the electricity, the tenant could have sought a formal agreement or have the issue brought before the Residential Tenancy Branch to have the issue resolved.

Neither party provided a copy of a hydro bill. I look to the tenant's document stating that from February 10 to April 10, hydro was \$91.71 and from April 10 to June 10, it was \$228.25. This averages to \$80.11 per month. The tenant seeks \$55.00 per month as compensation from the landlord without any explanation why the landlord should pay

the majority of the hydro utility. I find the tenant has not provided sufficient evidence to justify the value of the damage or loss, point 3 of the 4-point test.

Lastly, the issue of the repayment for the landlord's use of the electricity has been ongoing since as early as 2017. I find the tenant has not taken any steps to resolve the issue by seeking a formal agreement with the landlord or bringing the issue before the Residential Tenancy Branch for a resolution. The tenant has not taken the steps required to mitigate his damage or loss.

I find the tenant was unable to provide sufficient evidence to establish the 4 points as required by Rule 6.6 of the Residential Tenancy Branch rules of Procedure. This portion of the tenant's claim is dismissed without leave to reapply.

The tenant was not successful in the majority of his claim. The filing fee will not be recovered.

Conclusion

To give effect to the settlement reached between the parties and as discussed at the hearing, I issue an Order of Possession to the landlord. The landlord is to serve this Order of Possession immediately and enforce it as early as 1:01 PM on September 1, 2020, should the landlord be required to do so.

In order to implement the above settlement reached between the, I issue a monetary Order in the tenant's favour in the amount of \$600.00. If the tenant does not receive this amount before August 18, 2020, the tenant may enforce this order in the Provincial (small claims) 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: August 04, 2020

Residential Tenancy Branch