



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDL-S, MNRL-S, FFL, OPU (not applicable)

Introduction

In this dispute, the landlord seeks compensation for unpaid utilities and unpaid rent pursuant to section 67 of the *Residential Tenancy Act* (the "Act"). As noted in my Interim Decision of February 4, 2020 the tenant's application was dismissed without leave.

This matter was first heard on February 4, 2020, when it was adjourned for purposes of service of evidence. On April 6, 2020, I consented to the tenant's ex parte request for an adjournment because of commitments to her medical practice. At the hearing on August 18, 2020, new counsel for the tenant appeared. The matter was adjourned to October 1, 2020 and again adjourned to December 17, 2020, at which point the hearing was held. Landlord's counsel, the landlord's son, tenant's counsel, and an articling student, attended the hearing and were given a full opportunity to be heard, present testimony, make submissions, and call witnesses.

No issues of service were raised by the parties.

Issues

1. Is the landlord entitled to the amount claimed for unpaid rent?
2. Is the landlord entitled to the amount claimed for unpaid utilities?
3. Is the landlord entitled to recovery of the application filing fee?

Background and Evidence

I have only reviewed and considered oral and documentary evidence meeting the requirements of the *Rules of Procedure*, to which I was referred, and which was relevant to determining the issues in the application. Only relevant evidence needed to explain my decision is reproduced below.

The tenancy in this dispute began on November 15, 2018 and ended on November 15, 2019. Monthly rent was \$5,900.00, which was due on the first of the month. The tenant paid a security deposit of \$2,950.00, which the landlord currently holds in trust pending the outcome of this application. A copy of the written tenancy agreement was submitted into evidence.

The landlord claims that the tenant owes \$14,400.00 in rent arrears. The tenant disputes this and acknowledges that the amount owing is in fact \$7,400.00.

Both parties provided lengthy oral and written submissions in respect of the anomaly. The landlord's son apparently took care of the landlord's business, which included receiving rent payments from the tenant, in many cases by e-transfer. (Although, as it turns out, the tenant's son also took care of her business, in relation to the tenancy.)

The tenant's position is that a money order of \$7,000.00 was given to the landlord on or about August 21, 2019, though the landlord and the landlord's son claim never to have received it. The tenant's bank records, submitted into evidence, reflect a payment of \$7,000.00 made to the landlord. Despite this, the landlord is unable to explain the anomaly. No bank records of the landlord's son were submitted into evidence.

Tenant's counsel submitted that, while the tenant does not dispute that the tenant owes \$7,400.00, the onus is on the landlord to show that the tenant never paid the at-issue \$7,000.00. She argued that they have not proven this, despite evidence showing that the tenant made a transfer of \$7,000.00 on August 21, 2019.

In respect of the second part of the landlord's claim, landlord's counsel pointed out that as per the tenancy agreement the tenant was responsible for 100% of the utilities. The landlord is claiming \$15,597.24 in unpaid utilities, specifically, for water.

The tenant disputes this amount claimed and argues that due to a water leakage that was not properly taken care of by the landlord, water consumption was significantly higher than it would have been had there not been a leak. Tenant's counsel submitted that the tenant is willing to pay \$5,322.82 for the utilities, and this is based on a calculation (on page 10 of tenant's counsel's written submissions) taking into account an average usage rate had there not been a leak.

Regarding the water leak, on January 4, 2019, the landlord's son (E.) received a notification email from the municipality that there was a suspected water leak at the rental unit. A copy of the email was submitted into evidence. It does not appear that the

email was forwarded to the tenant. It should be noted that at all material times the utility statements were mailed to the landlord's address, which is different than the address of the rental unit's address. Tenant's counsel submitted that the tenant was not aware of any water usage issues.

Six months later, on June 12, 2019, the tenant's son called the landlord "raising his concern about water leakage in the house." On June 13, 2019, the landlord visited the property along with the plumber. According to the landlord's submissions, the occupants (it is not clear who this means) refused to answer the landlord's phone calls regarding the inspection for a month. The landlord's position is that the tenants "refused to cooperate with their landlord to solve the issues and preventing any further damage to the property."

The main issue with respect to the claim for utilities is, according to tenant's counsel, the notice. It is the tenant's position that, quite simply, the tenant was not given notice of any issue with the water until August 21, 2019. And, because the tenant was not given notice in a timely manner, they should not be liable for excessive water consumption not attributable to ordinary, reasonable usage.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Claim for Unpaid Rent

The tenant claims that they paid the disputed amount of \$7,000.00, whereas the landlord claims that they never received this. It is unclear as to what, in fact, happened to this \$7,000.00, though the tenant's bank records would support their counsel's argument that the tenant did, in fact, pay this.

When two parties to a dispute provide equally reasonable accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, I find that the landlord has failed to provide any clear and substantive evidence proving that tenant did not pay the rent.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of proving their claim for \$14,400.00 in rent arrears. But, as the tenant agrees they owe \$7,400.00, I award the landlord this undisputed amount.

Claim for Unpaid Utilities

It is not in dispute that the tenant was required to pay for utilities under the tenancy agreement, and it is not disputed that the tenant owes something. What is in dispute is whether the tenant is liable for what can only be described as an unreasonable water bill based on a major leak.

Relevant to this aspect of the claim is section 32(1) the Act, which states as follows:

A landlord must provide and maintain residential property in a state of decoration and repair that (a) complies with the health, safety and housing standards required by law, and (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Section 32(5) of the Act is also relevant, and it states that

A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

What may be taken from this section of the Act is that a landlord is obligated to provide a rental unit that is suitable for occupation and use by a tenant under reasonable use. That is to say, a tenant who is required to pay for utilities would only be expected to pay for suitable – that is, reasonable – utilities, and nothing unsuitable. It falls on the landlord to maintain their residential property in a state of repair that ensures normal water supply, and not one that is subject to a major leak.

It is rather negligent, if not odd, of the landlord to expect the tenant to pay the utilities but at the same time be the sole recipient of the municipal water bills. Not, of course, that some landlords do not simply forward the bills on to the tenant for payment. But the issue in this case is not so much the landlord's lapse in letting the tenant know about the suspected water problem, but rather, the landlord's lapse in taking action to repair or address the issue.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of proving their claim for \$15,597.24 for utilities. The tenant was obligated to pay for utilities, but not for utilities that cost substantially more due to the landlord's failure to comply with section 32(1) of the Act.

That said, I accept the \$5,322.87 as proposed by tenant's counsel to be a reasonable amount the tenant owes had there not been water leakage issues.

Claim for Filing Fee

Pursuant to section 72(1) of the Act I award the landlord \$100.00 for the filing fee.

Summary of Award, Retention of Security Deposit, and Monetary Order

A total of \$12,822.87 is awarded to the landlord.

Section 38(4)(b) of the Act permits a landlord to retain a security deposit if "after the end of the tenancy, the director orders that the landlord may retain the amount." I therefore order the landlord to retain the tenant's \$2,950.00 security deposit in partial satisfaction of the above-noted award. The balance of the award is granted by way of a \$9,872.87 monetary order. This order is issued to the landlord in conjunction with this Decision.

Conclusion

I hereby grant the landlord a monetary order in the amount of \$9,872.87, which must be served on the tenant. If the tenant fails to pay the landlord, the landlord may file and enforce the order in the Provincial Court of British Columbia (Small Claims Court).

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: December 23, 2020

Residential Tenancy Branch