



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT OLC

Introduction

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

- A monetary award for damages and loss pursuant to section 67; and
- An order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

As both parties were present service was confirmed. The landlord testified that they were served with the tenant's materials and had not served any materials of their own. Based on the testimonies I find the landlord duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Are the tenants entitled to a monetary award as claimed?

Should the landlord be ordered to comply with the Act, regulations or tenancy agreement?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

This periodic tenancy began on June 1, 2020 and ended in November 2020. The monthly rent was \$1,880.00 payable on the first of each month. The rental unit is a suite in triplex building. One of the other units is used by the landlord with the third occupied by a separate tenant. No written tenancy agreement was prepared for this tenancy. The parties agree that utilities were not included in the monthly rent.

The tenants submit that the utilities they paid were for two of the units of the triplex, their own unit and the unit used by the landlord. The tenants now seek a monetary award in the amount of \$416.00 a portion of the utilities paid during the tenancy. The parties agree that while the landlord was out of the country for the duration of the tenancy and no one was residing in the landlord's rental unit, the landlord had authorized some individuals to access the unit and use the facilities on some occasions. The tenants submitted into evidence copies of invoices from the utility companies for the period of the tenancy. The tenants were unable to explain how they apportioned the amount attributable to the landlord.

The landlord disputes the tenants' claim and says that the tenants are responsible for their utilities, the landlord's unit is unoccupied, and no portion of the monthly utility bills are attributable to the suite. The landlord explained that when their suite is occupied they regularly enter an agreement with the occupant of the rental suite to share the utility payments but as they did not reside in the suite no such agreement was made. The landlord testified that they have allowed some individuals to access the rental unit but that any utility consumption is negligible or non-existent.

Analysis

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. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Despite section 13 of the *Act* provided that a landlord must prepare in writing every tenancy agreement entered and the standard terms that must be contained therein, the landlord failed to prepare any written agreement. The only documentary record of this

tenancy is a letter dated May 22, 2020. I accept the evidence of the parties that utilities were not included in the agreed upon rent of \$1,880.00.

I accept the undisputed evidence of the parties that the amount charged on the utility bills for the rental suite included usage in the landlord's suite. I accept that no agreement was entered by the parties to apportion the utility charges between the tenants and the landlord. I accept the evidence of the parties that while the landlord's suite was unoccupied it was made accessible to the landlord's contacts. I find it reasonable to conclude that some use of the landlord's suite would result in some utility consumption. I find that there was no agreement between the parties whereby the tenants would be responsible for payment of utilities including those used in the landlord's suite. Therefore, I find that the additional utility charges arising from the use of the landlord's suite, paid by the tenants is a charge they had not agreed upon and recoverable from the landlord.

The tenants were unable to describe how they calculated the portion of the utility charges are attributable to the landlord. The tenants gave some testimony that the landlord's suite was accessed daily with many appliances used for preparing food but I find little documentary evidence has been provided to support their position.

In the absence of cogent submissions regarding the amount of their monetary losses, I find that the tenants have not met their evidentiary burden to establish their claim for \$416.00.

I find that a nominal monetary award in the amount of \$100.00, approximately 15% of the utility charges shown in the utility bills submitted, to be appropriate under the circumstances. This award is issued noting that some portion of the utility fees charged during the tenancy are attributable to the landlord's unit being accessed and used.

Conclusion

I issue a monetary order in the tenants' favour in the amount of \$100.00. The landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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: January 14, 2021

Residential Tenancy Branch