Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL, MNDCT, FFT

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

The tenants applied for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the landlord served the tenants with the notice of hearing package via Canada Post Registered Mail on May 25, 2020. Both parties confirmed the landlord served the tenants with the submitted documentary evidence in person on September 10 and the 17th of 2020. Both parties confirmed the tenants served the landlord via Canada Post Registered Mail on August 12, 2020. Both parties confirmed the tenants served the landlord with their notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on August 12, 2020. Neither party raised any service issues. I accept the undisputed affirmed evidence of both

parties and find that both parties have been sufficiently served as per sections 88 and 89 of the Act.

Extensive discussions over a 127 minute period resulted in the hearing being adjourned. Both parties were notified of the adjournment process and that a notice of adjournment with the new date, time and access codes would be provided with this interim decision. Both parties were also cautioned that no new evidence was to be submitted nor would it be accepted.

On January 4, 2021 the hearing was adjourned due to technical difficulties in conducting the hearing. Both parties were contacted and advised that a re-scheduled adjournment hearing would take place.

On January 25, 2021 the hearing resumed with both parties present and ready to proceed. At the outset of the rescheduled hearing the tenants stated that a mutual agreement to resolve the issue was made. The landlord disputed this claim stating that no mutual agreement was made. The tenants despite this claim stated that they have chosen at this time to cancel their entire monetary application. As such, no further action is required for the tenants' application.

During the hearing the landlord also clarified that the $1,010.00 security and $1,010.00 pet damage deposits were dealt with and resolved in a previous dispute resolution hearing decision. The tenants referenced a previous dispute resolution hearing decision dated April 15, 2020 (noted on the cover of this decision). In that decision the tenants were granted a monetary order for $1,697.58 regarding the security deposit. As such, the landlord's request to retain all or part of the security deposit is dismissed for lack of jurisdiction as a resolution has already been reached on that issue as per the term, "res adjudicata" in that the matter has already been determined or judged. No further action is required for this portion of the landlord's application.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for money owed or compensation and recovery of the filing fee?

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 / or arguments are reproduced

here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began on November 1, 2018 on a fixed term tenancy ending on October 31, 2019 and then thereafter on another fixed term or month-to-month basis as per the submitted copy of the signed tenancy agreement dated October 24, 2018. The monthly rent was $2,020.00 payable on the 1st day of each month. A security deposit of $1,010.00 and a pet damage deposit of $1,010.00 were paid.

The landlord seeks a monetary claim of $2,344.18 which consists of:

$595.39	Unpaid Utilities
$898.79	Penalty- double the amount
$100.00	Filing Fee
$50.00	Review Filing Fee
$600.00	Agent's Fee

During the hearing the landlord cancelled the claim of $898.79 for a penalty. The landlord's monetary claim request(s) for a $50.00 Review Filing Fee was dismissed as that was an unrelated administrative fee for the landlord in a Review Hearing Application in another matter. The landlord's claim of $600.00 for an agent's fee was also discussed. Section 72 of the Act addresses **Director's orders: fees and monetary order.** With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, the Landlord's claim for recovery of litigation costs (Agent's Fee) is dismissed. The hearing shall proceed on the landlord's unpaid utilities claim of $595.39 and recovery of the $100.00 filing fee for a total of $695.39.

The landlord repeatedly stated that she seeks unpaid utilities of $595.39 for the period November 2018 to February 2020 for hydro and gas. The landlord also repeatedly referred to submitted copies of utility bills for this period of time stating that the tenant was responsible for paying 50% of the utilities as per the signed tenancy agreement. The landlord repeatedly referenced the clause in section 3 of the signed tenancy agreement, Rent which states in part,

> *Tenants are responsible for 50% of the utilities payable @ $125pm, adjusted annually.*
> [reproduced as written]

The landlord repeatedly stated that the total utilities owed for the period November 2018 to February 2020 is $4,978.78 for which the tenant had paid a total of $1,895.00 leaving a balance of $595.39 to equal 50% of the total utility bills of $2,490.39.

The tenants argued that the utilities to be paid were agreed at initially $125.00 per month then $130.00 per month as a flat fee as per the signed tenancy agreement and the lease extension letter. The tenants argue that the terms for utilities made by the landlord were unclear and based upon their own interpretation of the agreement as opposed to the tenants' interpretation that there was a flat rate agreement instead. The tenants argue that at no time has the landlord requested payment of any utility arrears.

The landlords repeatedly argued that the utilities term outlined above is clear that the tenants were responsible for paying 50% of the total utilities, to pay $125.00 per month, which would be adjusted annually. The landlord clarified that both the Hydro and Fortis invoices were billed on an "Equal payment plan" which details a set monthly invoice which details usage amounts and the invoice amounts. The landlord repeatedly argued that if there was a "difference" that the accounts for each would be either credited or debited to reflect either an over or under payment. The landlord also repeatedly referred to email communications between the landlord and tenants regarding the payment of utilities. The landlord argues stating that the email communications dated March 18, 2020, emphasizing, "tenant is responsible for 50% of the utilities payable @ $125 pm, adjusted annually". Emphasized by the landlord that "tenant is responsible for 50% of utilities". This email also refers to the tenants' request for copies of each utility invoice starting in 2018. The landlord repeatedly argued that such a request would be unnecessary if the tenants only had to pay a flat $125.00 amount each month. The same email refers to an excerpt by the tenants in which states, "The agreement states '50% @$125'." Both parties also referred to the November 10, 2019 "lease extension agreement" which states in part,

> *Lease amount: $2050.00 rent **plus $130 utilities per month** due on the 1st of each month.*

It also states in part,

> *All other terms and conditions of the original lease dated October 31, 2018 remain in force except for the lease date and lease and utility amounts that are shown above*…

The tenants argued that this is proof that there was a flat $130.00 utility amount per month. The landlord repeatedly argued in response that "if that was the case there would be no need to reference that the "tenant is responsible for 50% of the utilities payable" or for the tenants to request copies of utility bills.

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.

In this case, I accept the submissions and testimony of both parties and find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenants. Despite the tenants' argument of an unclear landlord's utility term of:

> *Tenants are responsible for 50% of the utilities payable @ $125pm, adjusted annually.*
> [reproduced as written]

I find that the tenants' argument that there was a flat $125.00 monthly utility payment then an increased flat $130.00 monthly amount to be flawed. The submitted copies of the utility invoices both state that the accounts are on an "Equal payment plan" and in conjunction with the email communications submitted by the landlord I find that the landlord provided undisputed evidence that the tenants requested and received copies of both utility bills. I find that the tenants attached preceding email exchanges with the landlord for March 15, 16 and 17 of 2020 show that the tenants have taken excerpts from the utility term that the agreement was for 50% at $125.00 per month, then at $130.00 per month in their interpretation. Despite this slightly ambiguous term, I find that it is unreasonable of the tenants to ascertain that despite asking for and receiving copies of the utility bills that their 50% of the utilities would equal exactly $125.00 per month. I base this on the submitted copies of the utility bills which states a monthly balance payment amounts of $194.00 and usage balances from $185.79, $210.51, $214.18, $212.25, $244.98, $160.14, $154.94, $140.55, $134.56, $170.76, $157.47, $165.51, $199.28, $261.95, $315.00, $363.50 and $318.93. I find that these amounts in

conjunction with the beginning portions of the term, "**tenant is responsible for 50% of the utilities payable** @ $125 pm, **adjusted annually**". If the tenants were paying a monthly flat fee, there would be no reason for a request of copies of the utility bills. The landlord had argued that the utilities were based upon usage by both sets of tenants who occupied the rental building sharing at 50%. I also find that it would also be unnecessary for an "adjusted annually" amount for the utilities if there was a flat fee. I also find that it is not believable that the landlord would consistently require utility payments below that of the monthly payment and usage amounts for the rental building based upon the submitted utility bills.

As such, I find that the landlord has been successful in substantiating her claim of utility arrears totalling, $595.39.

The landlord having been successful is also entitled to recovery of the $100.00 filing fee.

Conclusion

The landlord is granted a monetary order for $695.39.

This order must be served upon the tenants. Should the tenants fail to comply with this order, the order may be filed in the Small Claims Division of the Provincial Court of British Columbia.

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 25, 2021

Residential Tenancy Branch