



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDCL, FFL

Introduction

The landlords applied for compensation pursuant to section 67 of the *Residential Tenancy Act* (“Act”) and for recovery of the filing fee under section 72(1) of the Act.

Both tenants, and one of the landlords, attended the hearing on March 19, 2021 which was held by teleconference. No issues of service were raised by the parties.

Issue

Are the landlords entitled to compensation?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the issue of this dispute, and required to explain the decision, is reproduced below.

The tenancy in this dispute began on June 1, 2015 and ended at the end of October 2020 when a new landlord took possession of the property.

The landlords seek compensation in the amount of \$1,438.54 for, as stated in their application, “unpaid utilities from 2015 to 2018”. In addition, they seek compensation in the amount of \$100.00 to cover the cost of the application for dispute resolution filing fee.

Submitted into evidence by the landlords were the following documents: (1) a copy of the written Residential Tenancy Agreement; and, (2) a copy of a demand letter, dated October 20, 2020, sent from the landlord (D.) to the tenants, in which the landlord sought payment of the utilities amount.

The landlord testified that when they were preparing paperwork related to the sale of the property, the municipality advised them that there were outstanding, that is, unpaid water bills from 2015 to 2018, inclusive. The landlord was confused, as the bills were supposed to be paid by the tenants, the landlord said.

It should be noted that the bills (that is, the municipal utilities account) were in the landlord's or landlords' name throughout this period. In February 2019 the landlord had the water bills changes over to the tenants' name. The landlord explained that before February 2019 the bill was in the landlord's name. The water bills were mailed to the rental unit, but, as explained by the tenants in their testimony, this mail was not opened.

Finally, I note that water is not checked off as being a service or facility that is included in the rent (see page two of the tenancy agreement).

After discovering the unpaid balance, the landlord contacted the tenants and had some text message conversations, copies of which were in evidence. The tenants stated, in those conversations, that the account was not in their name and that they would not be paying any outstanding amount.

The tenant (J.) testified that they had no idea – “no clue at all” – that they owed any money for water until the landlord contacted them prior to the sale of the property, and, they exclaimed, “almost two and a half year's later.” They noted that mail from the municipality came to the rental unit, but they did not open the mail because it was not addressed to them. The mail was apparently set aside, though the tenants did not say whether they ever contacted the landlord about this mail.

In respect of the water usage, the tenant testified that they drew their water from a well on the property like they had always done. In rebuttal, the landlord briefly commented that they hoped the tenants did not drink the water from this well, as the well water was meant for irrigation purposes.

Finally, in respect of the landlords' audio recording of a conversation purportedly had between the tenants and the new landlord, I will not consider this evidence. The audio quality is of such poor quality that I can derive nothing meaningful or pertinent from it that might support the landlords' application. Therefore, this specific evidence will not be referred to again in this decision and will have no bearing on my decision.

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.

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

1. has the respondent party to a tenancy agreement failed to comply with the Act, regulations, or the tenancy agreement?
2. if yes, did the loss or damage result from the non-compliance?
3. has the applicant proven the amount or value of their damage or loss?
4. has the applicant done whatever is reasonable to minimize the damage or loss?

The above-noted criteria are based on sections 7 and 67 of the Act, which state:

- 7 (1) 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.
- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.
- ...
- 67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

At the outset, I note that there is no documentary evidence before me to find or conclude that the tenants were legally obligated to pay the landlords' water bills. I find it rather odd that the water bills were in the landlords' name during the entire period for which the landlords seek compensation for unpaid bills, but that the landlords somehow feel that the tenants were required to pay.

If there was a verbal agreement between the parties that the tenants were to pay for the landlords' water bills, there is no evidence before me to support a finding that such an agreement existed. (This is not to say that such an agreement did not happen, rather, this is only to say that there is no evidence of such.)

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 landlords failed to provide any evidence that the tenants were legally responsible for paying the landlords' water bills.

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 landlords have not met the onus of proving that the tenants were obligated under either the tenancy agreement or the Act to pay for the water. Having found that the landlords have not proven a breach of the Act, or the tenancy agreement, I need not consider the remaining three criteria as noted above.

I dismiss the landlords' application, without leave to reapply. Further, as the landlords were not successful in their application, I must dismiss their claim for recovery of the cost of the application filing fee under section 72(1) of the Act.

Conclusion

I hereby dismiss the landlords' application, without leave to reapply.

This decision is final and binding, except where otherwise permitted under the Act or the *Judicial Review Procedure Act*, RSBC 1996, c. 241, and is made on authority delegated to me under section 9.1(1) of the Act.

Dated: March 19, 2021

Residential Tenancy Branch