



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AJ INTERNATIONAL SETTLEMENT
GROUP and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, FF

Introduction

On March 24, 2021, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking a monetary order for money owed or compensation for damage or loss and to recover the cost of the filing fee.

The matter was set for a conference call hearing. The Tenant and Landlord attended the hearing. The Tenant was assisted by legal counsel. At the start of the hearing, I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to a monetary order for money owed for compensation or damage or loss?

Background and Evidence

The Landlord and Tenant testified that the tenancy began on September 1, 2019 as a one-year fixed term tenancy to continue until August 31, 2020. Rent in the amount of \$2,600.00 was due to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$1,300.00. The Tenant was subletting

the rental unit with the Landlord's permission. The parties testified that the Tenant moved out of the rental unit on August 31, 2020.

Unpaid City Utility

At the start of the hearing the Landlord was asked to clarify her monetary claim. The Landlord's application indicates a monetary claim of \$2,190.71; however, the Landlord's documentary evidence only provides invoices for a claim amount of \$1,051.55.

After a lengthy discussion with the Landlord, she confirmed that her claim amount was incorrect because she included the unpaid amounts contained in the invoice along with the final amount owing that already included the unpaid amounts. The Landlord confirmed that her claim is actually for \$1,051.55.

The Landlord testified that under the tenancy agreement, rent does not include the service of water, garbage, or sewage. The Landlord testified that the Tenant did not pay any of the city bills for these utility services. The Landlord testified that she provided the invoices to the Tenant who replied that he would show the invoices to his tenants. The Landlord provided a copy of four city bill invoices for unpaid water, garbage, and sewage for a total amount owing of \$1,051.55 as of October 2, 2020.

In reply, the Tenant's counsel submitted that the Tenant paid the Landlord the amount of \$1,554.78 by cheque dated July 22, 2020. The Tenant provided a copy of the cheque which states that the payment was for utility and hydro. The Tenant's counsel submitted that \$707.07 of the amount paid was for city utility costs up to June 2, 2020.

The Tenant's counsel pointed out that the Landlords final utility bill for \$1,051.55 is for the period up to and including October 2, 2020; however, the tenancy ended on August 31, 2020.

The Tenant's counsel stated that the Tenant did not pay the utility bills on time because the Landlord failed to provide him with a copy of the bills when asked. The Tenant never received a copy of the final utility bill until he received document disclosure for this hearing. The Tenant's counsel stated that copy they received had a yellow sticker over the previous bill amounts which was confusing/ misleading.

The Tenant's counsel suggested that the Landlord may have collected twice on earlier invoices. The Tenant was asked if he made any other city utility payments and he

replied that the payment he made was the \$1,554.78 he paid on July 22, 2020 which included \$707.07 for city utility costs.

In reply, the Landlord provided testimony confirming that the Tenant paid her \$1,554.78 by cheque and that she cashed the cheque. The Landlord stated that the cheque was for hydro costs.

Analysis

The party making a claim for compensation against another party bears the burden of proof. Section 7 of the Act provides that if a Landlord or Tenant does not comply with the Act, the regulations, or their tenancy agreement, the non-complying Landlord or Tenant must compensate the other for damage or loss that results.

To be successful with a claim for compensation an applicant must prove:

1. That the other party breached the Act, regulation, or tenancy agreement.
2. That the breach caused the party making the application to incur damages or loss as a result of the breach.
3. The value of the loss; and,
4. That the party making the claim took reasonable steps to minimize the damage or loss.

The Residential Tenancy Policy Guideline # 16 Claims in Damages provides:

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

After considering the evidence of the Landlord and Tenant, and on balance of probabilities, I make the following findings:

Unpaid Utility

I find that the Landlord and Tenant entered into a tenancy agreement where rent does not include the cost of water, garbage, or sewage. I find that the Tenant is responsible to pay these utility costs to the Landlord.

I accept the Landlord's documentary evidence of city utility bills which provide that the Tenant owed \$707.07 for these utilities as of June 2, 2020.

I accept the Tenant's evidence that the Landlord was paid \$707.07 for city utilities as part of the payment made by cheque on July 22, 2020. My finding is supported by the cheque which provides that the payment was for utility and hydro.

I find that the Landlord never received the final city utility bill until October 2, 2020, and the Tenant had already vacated the rental unit on August 31, 2020. I find that the Tenant owes the Landlord for city utility costs for the period between June 2, 2020 to August 31, 2020. The Landlord did not provide a calculation for the amount owing for this period.

After deducting the previous bill amount of \$707.07 from the final bill of \$1,051.55, I find a balance of \$344.48. I find that the Tenant is responsible to pay for from June 2, 2020 to August 31, 2020 which is 90 days.

I find it is reasonable to pro-rate the final utility bill to determine the amount the Tenant owes the Landlord. [$\$344.48 / 126 \text{ days} = \2.73 per day . $90 \text{ days} \times 2.73 \text{ per day} = \245.70 .]

I find that the Tenant owes the Landlord the amount of \$245.70 for unpaid city utility costs. The Landlord has established a monetary claim against the Tenant in the amount of \$245.70.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I grant the Landlord a monetary order in the amount of \$345.70. The order must be served on the Tenant and may be enforced in the Provincial Court.

Conclusion

The Landlord established a claim for unpaid utility costs and the recovery of the filing fee in the amount of \$345.70.

The Landlord is granted a monetary order in the amount of \$345.70.

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 25, 2021

Residential Tenancy Branch