



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on September 21, 2021 (the “Application”). The Landlord applied as follows:

- For compensation for monetary loss or other money owed
- For reimbursement for the filing fee

The Landlord and Tenant attended the hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I confirmed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all documentary evidence and testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to compensation for monetary loss or other money owed?
2. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord sought \$559.85 for an unpaid water bill issued August 31, 2021.

A written tenancy agreement was submitted, and the parties agreed it is accurate. The tenancy started June 06, 2015. Rent is \$2,200.00 per month due on the first day of each month. Section three of the agreement outlines what is included in rent and shows that water, electricity and heat are not included. There is a one-page addendum to the agreement which includes term three stating, "utility fee ratio is $\frac{3}{4}$ ".

The tenancy is ongoing.

The only issue before me is whether the Tenant is responsible for paying for water bills.

The Landlord submitted that the Tenant is responsible for paying for water because "water" is not checked off as included in rent in section three of the tenancy agreement.

The Tenant testified that they asked about utilities at the start of the tenancy and the Landlord said they would be responsible for $\frac{3}{4}$ of electricity and gas. The Tenant said that, since 2015, they have only been paying for electricity and gas and were asked to pay for water for the first time in 2021.

In reply, the Landlord agreed they did not ask the Tenant to pay for water from 2015 to 2021 and said this was a mistake. The Landlord denied that the Tenant was told they would only be responsible for electricity and gas at the start of the tenancy.

The Tenant submitted an email from the Landlord dated September 13, 2021, stating that the Landlord waives payment of the water bills prior to 2021 but is enforcing the tenancy agreement for the August 2021 bill.

Analysis

Section 7 of the *Act* states that, if a tenant does not comply with their tenancy agreement, they must compensate the landlord for loss that results.

I find the Tenant is required to pay for water, electricity and heat pursuant to the tenancy agreement because section three shows these utilities are not included in rent and the addendum is clear that the Tenant will pay for $\frac{3}{4}$ of utilities.

I do not accept that the agreement between the parties at the start of the tenancy was something other than what is shown in the written tenancy agreement because there is no compelling evidence before me to support this and I find the tenancy agreement clear that the Tenant is responsible for paying for water.

I agree with the Landlord's statement in their email dated September 13, 2021, that they have waived their right to collect payments for water bills prior to 2021 by failing to provide bills to the Tenant and failing to enforce the tenancy agreement as it relates to the Tenant paying for water. However, I also find the Landlord is entitled to give the Tenant notice that they are now enforcing the terms of the tenancy agreement and collecting $\frac{3}{4}$ of the water bill. I find the Landlord did give notice about enforcing the terms of the tenancy agreement with the email dated September 13, 2021. I find the Landlord is entitled to enforce the tenancy agreement as it relates to the Tenant paying for water starting September 13, 2021 on.

The water bill the Landlord seeks compensation for was issued August 31, 2021, and covers a period prior to September 13, 2021. I am not satisfied the Landlord is entitled to compensation for the August bill because it pre-dated the Landlord's notice to the Tenant about enforcing the terms of the tenancy agreement which was in the email dated September 13, 2021. Given this, the Landlord's request for compensation is dismissed without leave to re-apply.

The Landlord submitted a second water bill issued April 28, 2022; however, the Landlord did not seek compensation for this in the Application and therefore I have not considered it.

Given the Landlord has not been successful in the Application, I decline to award the Landlord reimbursement for the filing fee.

Conclusion

The Application is dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: June 06, 2022

Residential Tenancy Branch