



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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DECISION

Dispute Codes FFL, MNU-DR, OPU-DR, MNDCL, MNDL-S

Introduction

The landlord filed an application for dispute resolution in which they sought an order of possession and monetary orders for unpaid rent, unpaid utilities, and recovery of the application filing fee under the *Residential Tenancy Act* ("Act").

Attending the dispute resolution hearing were the landlord, one of the tenants, and an interpreter for the tenant. The parties were affirmed, and no service issues were raised. It should be noted that while the landlord listed a total of five tenants, only two of those tenants are listed on the written tenancy agreement. As such, the remaining three tenants have been removed as parties to this application.

Preliminary Issue: Tenancy Has Ended

The tenants vacated the rental unit on or about July 5, 2022. As such, the landlord's application for an order of possession is moot.

Issue

Is the landlord 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 to explain the decision, is reproduced below.

The tenancy began on June 1, 2016 and monthly rent at the time the tenancy ended was \$2000. The tenants paid a security deposit in the amount of \$850. There is a copy of a written tenancy agreement on file.

The landlord seeks \$4,500 in unpaid rent and \$1,006.29 for, as written in the monetary order worksheet, water, natural gas, and a “utility bill.” There is a reference in the worksheet to the tenants being responsible for 25% of the water, natural gas, and the municipal utility bill. Copies of utility bills were submitted into evidence. Neither of the tenants’ names appear on the utility bills. No copies of a rent payment ledger or any transaction of previous rent payments, or lack thereof, were submitted into evidence.

It should be noted that on page two of the written tenancy agreement, water, electricity, and natural gas are included in the rent. There is no reference either in the written tenancy agreement or any addendum to the tenants being responsible for paying a percentage of the water, natural gas, or electricity.

The landlord also seeks an unspecified amount, ranging from \$400 to \$550, in compensation to pay for the removal of the tenants’ garbage. No receipts, invoices, or estimates to support this claim were submitted into evidence.

The tenant’s interpreter briefly spoke about the landlord always requiring or accepting rent in cash payments. She further spoke and testified that the landlord has been paid rent. Last, the interpreter argued that the landlord has provided no evidence regarding the non payment of rent.

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.

Section 26 of the Act states that a tenant must pay rent when it is due under the tenancy agreement unless the tenant has a right to deduct all or a portion of the rent.

In this case, the landlord testified that the tenants owe \$4,500.00 in unpaid rent. The tenant disputes this claim and argued that rent has always been paid. It has been paid in cash. When two parties to a dispute provide equally plausible 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 the case before me, I find the landlord has failed to provide any evidence to support her claim that the tenants failed to pay rent. She has not provided a copy of any rent ledger showing when rent was received (or not received). Nor is there a copy of any banking statement which might lend credence to the tenants’ alleged non-payment of rent.

Taking into consideration all the oral and documentary evidence before me, it is my finding that the landlord has not proven on a balance of probabilities that she is entitled to compensation for unpaid rent. As such, this aspect of the landlord's application is dismissed without leave to reapply.

In respect of the natural gas, water, and municipal utility bill, there is nothing in the written tenancy agreement that supports the landlord's claim that the tenants are somehow responsible for paying 25% of these amounts. Indeed, the written tenancy agreement on page two very clearly states that natural gas and water are included in the rent of \$2,000. That means, quite simply, that the tenants pay their rent and enjoy the provision of water, natural gas, and electricity without having to pay anything in addition to the rent.

In summary, I am not satisfied based on the evidence before me that the tenants owe any amount for utility, water, and natural gas bills. As such, this aspect of the landlord's application is dismissed without leave to reapply. If a landlord wishes a tenant to pay for a percentage of any type of utility, that expectation must be stated clearly either within the tenancy agreement itself or within an addendum to the agreement.

The landlord is ordered, pursuant to section 62 of the Act, to repay to the tenants their \$850.00 security deposit within 15 days of receiving this decision. A copy of a monetary order to give effect to this order is issued in conjunction with this decision, to the tenants.

Conclusion

The landlord's application is hereby dismissed, without leave to reapply.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: August 11, 2022

Residential Tenancy Branch