



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDL, MNRL, FFL

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss, for a monetary Order for unpaid rent or utilities, and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on January 24, 2022 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch on January 06, 2022 was sent to the Tenant, via registered mail. The Tenant acknowledged receiving these documents and the evidence was accepted as evidence for these proceedings.

On July 28, 2022 the Landlord submitted evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was served to the Tenant, via registered mail, on July 28, 2022. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On August 09, 2022 the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the Landlord, via registered mail, on August 09, 2022. The Landlord stated that she did not pick up this mail until August 16, 2022.

The Landlord was asked if she would like an adjournment to provide her with more time to consider the evidence submitted by the Tenant. The Landlord replied that she did not need more time to consider the evidence. As such, the evidence was accepted as evidence for these proceedings, without the need for an adjournment.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the site and compensation for unpaid rent or utilities?

Background and Evidence

The Landlord and the Tenant agree that:

- the tenancy began in February of 2019;
- the tenancy ended on April 30, 2021;
- the Tenant agreed to pay monthly rent of \$300.00 for the residential portion of the property she was living in;
- when the Tenant paid rent, it was always paid in cash;
- the Landlord never provided a receipt when rent was paid; and
- the Tenant agreed to pay 1/3 of the hydro bill, which would be paid directly to another occupant of the residential complex, upon request.

In the Application for Dispute Resolution the Landlord declared she is seeking a monetary Order for unpaid rent, in the amount of \$2,403.00. In a document submitted as evidence, it appears the Landlord is claiming \$2,640.00 in unpaid rent and \$263.00 in hydro.

At the hearing the Landlord stated that she is withdrawing the claim for unpaid rent for May, June, and July of 2022; that she is claiming \$1,800.00 for unpaid rent, and that she is claiming \$130.00 for utilities. On the basis of this testimony, these are the amounts I will be considering for unpaid rent/utilities.

The Landlord stated that rent was not paid for any period between October 01, 2020 and February 28, 2021; and that rent was not paid for April of 2021. The Tenant stated that she paid her rent in full for all of those months.

In support of the claim for unpaid rent, the Landlord referred to a letter written by the Tenant, which the Landlord submitted in evidence. (Document 2) This document outlines various payments the Tenant alleges were made. At the conclusion of the document the Tenant write "Total \$2300.00 to cover October 2020 to December 2020 minus \$100.00 owing". The Landlord stated that she interprets this final sentence to mean that the Tenant still owes rent for the period between October 01, 2020 and December 31, 2020. The Tenant stated that she interprets this final sentence to mean that rent for that period has been paid in full. Neither the Landlord nor the Tenant knows what the "minus \$100.00 owing".

In support of the claim for unpaid rent, the Landlord submitted documents that declare the Tenant's husband has previously not paid rent on time for a commercial rental. The Landlord also submitted an allegedly outstanding invoice in the name of the Tenant.

In support of the claim for \$130.00 in utilities, the Landlord referred to the hydro bill of \$434.70, which is for the period March 31, 2021 to May 31, 2021. The Landlord and the Tenant agree that the Tenant has not paid any portion of this hydro bill. The Tenant stated that she had not yet pad any portion of this bill because it was not presented to her prior to the filing of this Application for Dispute Resolution.

The Landlord stated that the Tenant owes \$85.00 for the aforementioned bill for the residential complex. The Tenant agreed to pay her portion of this bill. The Landlord stated that the Tenant also owes \$178.00 for hydro costs used by the Tenant's son elsewhere on the residential property.

The Landlord is seeking compensation, in the amount of \$200.00, for soffit damage. The Landlord stated that the other occupant of the residential complex told her that the Tenant's husband damaged the soffit with his truck. The Landlord acknowledges that she submitted no evidence from the other occupant and that she never spoke with the Tenant about the damage.

The Tenant stated that she does not know how the soffit was damaged and that she has never spoken with her husband, the Landlord, or the other occupant about the damage.

Analysis

There is a general legal principle that places the burden of proving a claim occurred on the person who is claiming compensation, not on the person who is denying the claim. As this is the Landlord's Application for Dispute Resolution, the Landlord bears the burden of proving rent and/or utilities are owed.

On the basis of the undisputed evidence, I find that the Tenant agreed to pay monthly rent of \$300.00 for the residential portion of the property she was living in.

I find that the Landlord has submitted insufficient evidence to establish that the Tenant has failed to pay rent for October, November, December of 2020 and January, February, and April of 2021. I therefore dismiss the claim for unpaid rent. In reaching this conclusion I find there is insufficient evidence to corroborate the Landlord's claim rent was not paid for these months or to refute the Tenant's claim that rent was paid for those months.

Section 26(2) of the *Residential Tenancy Act (Act)* stipulates that a landlord must provide a receipt when rent is paid by cash. Cash receipts help to establish when a rent payment has not been made. When a landlord regularly provides receipt for cash payments there is an expectation that a tenant will produce a receipt for every cash payment that has allegedly been made. When a tenant is unable to provide a receipt for an alleged payment, it lends credibility to a landlord's claim that a cash payment has not been made. When a tenant has previously made cash payments and has never been provided with a receipt, there is no expectation that the tenant will provide a receipt for a cash payment that has been made. In these circumstances the Landlord's failure to provide receipts for cash payments made during this tenancy has significantly impaired her ability to prove that the Tenant did not pay her rent for the aforementioned months.

In considering this matter I have placed little weight on the letter written by the Tenant which the Landlord submitted in evidence (Document 2), which outlines various payments the Tenant alleges were made. Although this letter suggests that payments have been made for various months, this is simply a written submission of the Tenant that has no greater value than her testimony regarding the payments made.

I find that the last sentence of Document 2 has little value. This sentence could be interpreted to mean the \$2,300.00 has been paid for the period between October 01,

2020 and December 31, 2020, as the Tenant submits, or it could be interpreted to mean the \$2,300.00 is still owing for the period between October 01, 2020 and December 31, 2020, as the Landlord submits. The reference to the “minus \$100.00 owing” could be interpreted to mean the Landlord owes the Tenant \$100.00 or that the Tenant owes the Landlord \$100.00.

In considering this matter I have placed no weight on the documents that declare the Tenant’s husband has previously not paid rent on time for a commercial rental. As the Tenant’s husband is not named on this Application for Dispute Resolution, his financial history is not relevant to this claim.

In considering this matter I have placed no weight on the allegedly outstanding invoice in the name of the Tenant. Even if the Tenant has outstanding debts, it does not establish that she has not paid rent that was due.

On the basis of the testimony of the parties, I find that the Tenant agreed to pay 1/3 of the hydro bill, which would be paid directly to another occupant of the residential complex, upon request. On the basis of the undisputed testimony, I find that the Tenant has not yet paid any portion of the hydro bill of \$434.70.

As the hydro bill of \$434.70 is for the period between March 31, 2021 and May 31, 2021, and the Tenant only occupied the rental unit until April 30, 2021, I find that she is only obligated to pay her portion of 50% of this bill, which is \$217.35. As the Tenant is only obligated to pay 1/3 of the hydro bill, I find that she owes \$72.45 in hydro for this bill.

As there is no evidence before me to establish that the Tenant is obligated to pay hydro costs on behalf of her son, I dismiss the Landlord’s claim for any hydro costs incurred by the son.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

I find that the Landlord submitted insufficient evidence to establish that the Tenant's husband damaged the soffits. In reaching this conclusion I was heavily influenced by the absence of any evidence that clearly establishes the soffits were damaged by the Tenant's husband. Although I accept the Landlord's testimony that another occupant of the residential complex told her that the Tenant's husband caused the damage, I find that is hearsay evidence which is fraught with frailties.

As the Landlord has failed to establish that the soffits were damaged by the Tenant's husband, I cannot conclude that the Tenant is obligated to pay for the cost of repairing the damage.

As the Landlord has only established the right to compensation for unpaid utilities; the Landlord did not ask the Tenant to pay for those utilities prior to filing this Application for Dispute Resolution; and the Tenant agreed to pay for those utilities at the hearing, I find it entirely possible that the Tenant would have agreed to pay for her share of the utilities without the need for these proceedings. As such, I find that the Landlord is not entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of \$72.45 for hydro, and I grant the Landlord a monetary Order for that amount.

In the event the Tenant does not voluntarily comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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: August 17, 2022

Residential Tenancy Branch