



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing was convened to hear the Tenant's Application for Dispute Resolution made on September 28, 2022. The Tenant applied for the following relief, pursuant to the Residential Tenancy Act (the Act):

- an order granting compensation for monetary loss or other money owed;
- an order reducing rent; and
- an order granting recovery of the filing fee.

The Tenant attended the hearing and was accompanied by RM and AM. The Landlord attended the hearing on her own behalf. All in attendance provided a solemn affirmation at the beginning of the hearing.

On behalf of the Tenant, AM testified the Landlord was served with the Notice of Dispute Resolution Proceeding package by registered mail. The Landlord acknowledged receipt of these documents. Therefore, pursuant to section 71 of the Act, I find these documents were sufficiently served for the purposes of the Act.

The Landlord testified the documentary evidence on which she relies was served on the Tenant by registered mail. However, the Tenant denied receipt of these documents and the Landlord did not submit documents in support of service by registered mail. Therefore, the Landlord's documentary evidence has not been considered further in this decision.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure, and to which I

was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

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

Background and Evidence

The parties agreed the fixed term tenancy began on August 1, 2021 and was expected to continue to July 31, 2022. However, the parties agreed the tenancy ended by agreement on June 30, 2022. During the tenancy, rent was \$3,100.00 per month. The parties did not dispute that utilities were not included in rent, as indicated in the tenancy agreement submitted. The Tenant paid a security deposit of \$1,550.00 and a pet damage deposit of \$400.00, which were returned to the Tenant. A copy of the tenancy agreement signed by the Tenant was submitted into evidence.

The Tenant and the Landlord agreed the Tenant paid \$3,076.30 for utilities during the tenancy. However, the Tenant asserts that utilities were overpaid because she and her family occupied roughly half of the rental property. As a result, the Tenant's claim is for \$1,538.15 ($\$3,076.30 / 2 = \$1,538.15$).

On behalf of the Tenant, RM testified to his belief that the square footage of the rental unit was a little more than half the total square footage of the house. The Tenant and RM testified that the issue regarding the share of utilities paid was raised with the Landlord 3-4 times during the tenancy. They testified that they thought paying half of the utilities would be fair. RM also indicated that he and the Tenant were more concerned with heating and cooling costs rather than electricity use.

AM also gave testimony on behalf of the Tenant. AM testified that he looked at a BC Assessment document and that it appears the square footage of the upstairs and downstairs spaces are roughly equal. AM acknowledged that he did not take any measurements. I was not referred to a copy of the BC Assessment document in the Tenant's evidence.

In written submissions provided with the application, the Tenant indicated she paid the utility bills presented by the Landlord out of fear of being evicted.

In reply, the Landlord disagreed with the Tenant's assessment of the size of the downstairs space. She testified that a local bylaw limits the size of legal basement suites to 40% of the total square footage of the property. The Landlord estimated that the upstairs unit is about 67% of the total square footage and that the downstairs space is about 33% of the total square footage. The Landlord did not provide any corroborating documentary evidence.

In addition, the Landlord testified that there are no kitchen or other appliances in the downstairs space to add to the Tenant's utility consumption at the rental property.

The Landlord also testified that she stayed in the downstairs space only 13 nights during the tenancy. The Landlord also testified that vents in the downstairs space were closed to maximize the efficient use of temperature controls for the Tenant. RM disagreed the vents were closed but suggested this was not a good solution anyway.

Further, the Landlord suggested the Tenant may have underpaid utilities, and wrongly applied the deposits held to the final month's rent without the Landlord's consent.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 67 of the Act empowers the director to order one party to pay compensation to the other if damage or loss results from a party not complying with the Act, regulations, and/or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the Act. An applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss because of the violation;

3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss

In this case, the burden of proof is on the Tenant to prove the existence of the damage or loss, and that it stemmed directly from a violation of the Act, regulation, and/or the tenancy agreement on the part of the Landlord. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the Tenant did what was reasonable to minimize the damage or losses that were incurred.

After careful consideration of the evidence and submissions of the parties, I find there is insufficient evidence before me to grant the relief sought. Specifically, I find there is insufficient evidence the Landlord violated the Act, regulation, and/or the tenancy agreement. Indeed, the tenancy agreement signed by the Tenant and RM is clear – utilities were not included in rent. If the Tenant did not want to enter into the tenancy agreement on that basis, she was at liberty to negotiate with the Landlord or look for rental accommodation elsewhere. However, it was not until the tenancy agreement was signed and the Tenant had moved in that the issue was raised with the Landlord.

In addition, I find there is insufficient evidence the Tenant suffered a loss. Again, the tenancy agreement stipulates that utilities are not included in rent. As a result, I find it is more likely than not that the Tenant merely paid what was due based on consumption.

Further, it appears that the Tenant paid most (if not all) of the utility bills presented by the Landlord during the tenancy in full. If the Tenant believed she was paying more for utilities than agreed she was at liberty to make an application for dispute resolution with respect to the invoices presented by the Landlord. Alternatively, if the Tenant came to believe she had struck an unfair bargain, she was at liberty to negotiate an early end to the fixed term tenancy. No evidence of an application for dispute resolution made during the tenancy or an attempt to negotiate an early end to the tenancy was provided during the hearing.

Finally, I am not aware of any authority which concludes that a tenant's share of utilities must be based on square footage.

Considering the above, I find the Tenant's request for compensation of \$1,538.15 is dismissed without leave to reapply. As the Tenant has not been successful, I also find the Tenant's request to recover the filing fee is dismissed without leave to reapply.

Conclusion

The Tenant's application is dismissed without leave to reapply.

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: November 8, 2022

Residential Tenancy Branch