



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, FFL

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on May 8, 2022. The Landlord applied for the following relief, pursuant to the Residential Tenancy Act (the Act):

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

The Landlord and the Tenant attended the hearing and provided affirmed testimony.

The Landlord testified that the Notice of Dispute Resolution Proceeding package and amendment were served on the Tenant by registered mail on May 18, 2022. The Tenant acknowledged receipt. No issues were raised with respect to service or receipt of these documents. The parties were in attendance and were prepared to proceed. Therefore, pursuant to section 71 of the Act, I find the above documents were sufficiently served for the purposes of the Act.

The Tenant did not submit documentary evidence in response to the application.

The parties were provided with 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 Landlord entitled to a monetary order for compensation for monetary loss or other money owed?
2. Is the Landlord entitled to an order granting recovery of the filing fee?

Background and Evidence

The parties agreed the tenancy began on September 1, 2016 and ended on September 30, 2021. During the tenancy, rent of \$3,190.00 per month was due on the first day of each month. Utilities were not included in the rent. The parties agreed the Tenant paid a security deposit of \$1,400.00, which was retained by the Landlord at the end of the tenancy with the Tenant's agreement. A copy of a signed tenancy agreement was submitted into evidence.

The Landlord's claim is for unpaid utilities. Although the application discloses a claim for \$718.57, the Monetary Order Worksheet describes a claim for \$716.32. The Landlord confirmed it is the lesser amount she is seeking.

In support of the claim, the Landlord submitted a utility bill for \$867.89, dated January 13, 2022. However, the Landlord clarified that she is only seeking \$690.95 carried over from the previous bill, and \$25.37 on account of a penalty ($\$690.95 + \$25.37 = \$716.32$).

The Tenant testified that she does not dispute the amount of utilities claimed by the Landlord.

The Landlord also seeks to recover the \$100.00 filing fee paid to make the application.

The Tenant disputes payment of the filing fee. The Tenant testified that she had been paying the utilities directly but was unable to do so because the Landlord put the utilities in her name and because of her financial status as a student. In addition, the Tenant testified that if the Landlord had merely told her the amount due, she would have paid.

In response, the Landlord testified that the payment of utilities was raised during the move-out condition inspection and in an email sent to the Tenant after the end of the tenancy.

Analysis

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

In this case, the Tenant agreed to pay \$716.32 for unpaid utilities during the tenancy. I grant the Landlord a monetary award of \$716.32 for unpaid utilities.

With respect to the filing fee, I find it is more likely than not that the Tenant was made aware of outstanding utilities, whether at the move-out condition inspection or in a subsequent email. I also find it would have been reasonable for the Tenant to contact the Landlord regarding payment of utilities in the seven month period between the end of the tenancy and the Landlord's application. Therefore, I find the application was necessary and that the Landlord is entitled to recover the filing fee.

Considering the above, I find the Landlord is granted a monetary order for \$816.32 which is comprised of \$716.32 for unpaid utilities and \$100.00 in recovery of the filing fee.

Conclusion

The Landlord is granted a monetary order in the amount of \$816.32. The order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: January 20, 2023

Residential Tenancy Branch