



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR-S, MNDC, FF

Introduction

This hearing convened as a result of the landlord's application for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for a monetary order for unpaid rent, compensation for a monetary loss or other money owed, authority to keep the tenants' security deposit to use against a monetary award and recovery of the cost of the filing fee.

The landlord and the tenant attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me. The tenant presented no issues with receipt of the landlord's application and evidence. The tenant did not file evidence.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation from the tenant, to keep the security deposit to partially satisfy a monetary award, and recovery of the cost of the filing fee?

Background and Evidence

The landlord said that the tenancy began on December 1, 2019 and ended on April 30, 2021. Monthly rent was \$5,500 and the tenant paid a security deposit of \$2,750. The landlord described the residential property as an equestrian facility with a house. The landlord retained the tenant's security deposit.

There was no written tenancy agreement. The landlord said that he gave the tenant a tenancy agreement, but he would not sign it. The tenant said he wanted to discuss the terms, and they never got around to the discussion.

The tenant said he was asked to leave at the end of March 2021, and left in mid April.

The rental unit was in a house which was shared with another family, according to the tenant.

Further, I heard testimony that the tenants shared a horse barn on the property with other tenants.

The landlord's monetary claim is \$23,636.05, comprised of unpaid rent of \$19,250 and unpaid utility charges of \$4,386.05. The landlord's claim is 4 months of unpaid rent, or January through April 2021, which would be \$22,000. However, the evidence shows the claim amount was through a deduction by the landlord of the tenant's security deposit of \$2,750.

The landlord stated he got concerned in December 2020 when the monthly rent was paid on December 18. The tenant did not pay the monthly rent for the following four months prior to vacating in April 2021.

While the tenant did not dispute that rent was not paid, the tenant stated that he began having financial issues due to Covid and problems with his horse business, due to the other tenants sharing the barn. The tenant said that he told the landlord about the

financial issues and did some work for the landlord, for instance, \$2,500 in bobcat services and paying for gravel at the landlord's clinic.

The landlord stated that he would be willing to reduce his monetary claim by \$2,000 for the work done and all the gravel costs, when he receives the invoice.

As to the utilities, the landlord submitted that the tenant was to pay 2/3 of all utility invoices for the house and barn, but has only paid sporadically. The landlord referred to the Excel spreadsheet to show amounts owed and payments made.

The tenant replied and said that he discussed the matter with the landlord and told him he was not willing to pay the Fortis bill when the other tenants sharing the barn kept turning on the heater. The tenant said that they shared the barn with other tenants, each should be responsible for 1/2 of the utilities. The tenant said he agreed to pay one-half hydro in the house and one-half in the barn.

The landlord said that they agreed the tenant would pay 2/3 and left it for the two sets of tenants to sort out the difference depending on usage.

Analysis

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. The claiming party has the burden of proof to substantiate their claim on a balance of probabilities.

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement, whether or not the landlord complies with the Act, the Regulations or the tenancy agreement and is not permitted to withhold rent without the legal right to do so. A legal right may include the landlord's consent for deduction; authorization from an Arbitrator or expenditures incurred to make an "emergency repair", as defined by the Act.

In this case, the tenant did not deny owing the monthly rent \$5,500 that was unpaid for January through April, 2021. For this reason, I find the landlord submitted sufficient evidence to support his monetary claim of \$22,000.

As to the landlord claim for unpaid utility charges, I find this claim is less clear. The parties disagreed as to the percentage of utilities for which the tenant would be responsible.

The Act requires a landlord to prepare a written tenancy agreement, providing the standard terms. In this case, I did not have a written tenancy agreement before me and had disputed testimony as to what percentage the tenant agreed to pay. The landlord claimed the tenant was required to pay 2/3 of all utilities for the house and barn and the tenant said he was required to pay 1/2 of the utilities, with the exception of the Fortis bill for the barn.

Without a written tenancy agreement outlining the parties' responsibilities, the actual requirement of payment of utilities is then left open to interpretation. Disputed testimony, without anything further, is not sufficient for the claimant to meet their burden of proof.

In this case, the evidence showed that the tenants shared both the house and the barn, with the two sets of tenants both having horses in the barn, and I find it reasonable to conclude the tenant was responsible to pay 1/2 of all utilities during this tenancy.

For this reason, I find the tenant owed 1/2 of all utilities during the tenancy, or December 2019 through April 2021. In using the detailed spreadsheet provided by the landlord, supported by copies of the utility bills, I calculate the amount of utilities owed and paid by the tenant, as follows:

\$9,002.96 total BC Hydro + \$4,046.96 total Fortis BC = \$13,049.92. Half this amount = \$6,524.96. Tenant has paid \$4,039.24 total utilities. Therefore \$6,524.96 - \$4,039.24 leaves a deficit of \$2,485.72 that the tenant owes the landlord for utilities.

As a result of the above, I find the landlord has established a total monetary claim of \$24,585.72, comprised of \$22,000 for unpaid rent and \$2,485.72 in unpaid utility charges. I also grant the landlord recovery of the filing fee of \$100.

At the landlord's agreement, I reduce the amount of the landlord's monetary claim by \$2,000 for work done on the landlord's property, leaving the landlord a total monetary claim of \$22,585.72.

I order that the landlord retain the security deposit of **\$2,750.00** in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 of the Act for the balance due of **\$19,835.72**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court if necessary. The tenant is cautioned that costs of enforcement are recoverable from the tenant.

Conclusion

The landlord is granted a monetary order and noted above and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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: February 01, 2023

Residential Tenancy Branch