



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCT, RP, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants filed under the *Residential Tenancy Act* (the “Act”) for a monetary order for compensation under the Act, to have the landlord make repairs and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

I confirmed with the tenants that RB is the child of the tenants. I have removed RB from the style of cause of the covering page of the Decision as the child should not have been named.

Issue(s) to be Decided

Are the tenants entitled to monetary compensation?
Should the landlord be ordered to make repairs.

Background and Evidence

The tenancy began on August 3, 2019. Rent in the amount of \$1,000.00 was payable on the first of each month. A security deposit of 400.00 was paid by the tenants.

In evidence is a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) issued on March 8, 2023, showing the tenants had failed to pay rent owed in the amount of \$6,500.00.

The tenants confirmed at this hearing that they did not pay the outstanding rent for January, February or March 2023 totalling \$3,000.00 and they did not dispute the Notice. The tenants disagreed that they owe the amount in the Notice.

The tenants testified that they did not pay the landlord rent because they believe the landlord breached the Act and owes them money for utilities as they discovered in July of 2022, that they are paying for the energy that is heating the hot water, which is used by the lower tenants. The tenants stated that they paid approximately \$6,000.00 since 2019 and seek to recover the amount of \$2,000.00.

The landlord submits that when they discover the problem they had a hot water tank installed in the other rental unit. The landlord stated they have no issue with crediting the tenants with the amount claimed; however, the tenants just stopped paying rent and this would still leave money owing to the landlord.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In this case, there may have been an issue with the energy paid by the tenants to heat the hot water tank that supplies two units; while this might be contrary to the Act, for the tenants to be paying solely to heat the hot water, this does not give the tenants the rights under the Act to simply stop paying the rent.

The landlord agreed to the amount claimed by the tenants in the amount of \$2,000.00. However, even if I accept the tenant's position that they thought they could withhold rent, which I do not. The amount of rent withheld by the tenants far exceeds their claim even if I accept their testimony that they owe \$3,000.00, and not the \$6,500.00 indicated by the landlord. Clearly the tenants had to have known or ought to have that they were breaching section 26 of the Act.

As the landlord agreed that the tenant should be entitled to the compensation, I find the tenants are entitled to receive a credit of \$2,000.00 and \$100.00 to recover the cost of the filing fee. This is not a retroactive decision as the tenants did not have the authority under the Act to withhold the rent when it was due.

However, I have not granted the tenants a monetary order because I find that would be an unjust enrichment, clearly the tenants owed the landlord more money in unpaid rent.

I have not made a finding on the amount owed by the tenants as that issue is not before me; however, it is between \$3,000.00 and \$6,500.00. Therefore, the landlord is entitled to apply the \$2,100.00 towards the unpaid rent. Should the landlord seek a monetary order for the unpaid rent they must inform the Arbitrator of this credit.

Conclusion

The tenants' application is granted. I have not granted the tenants a monetary order as they have failed to pay rent and the amount owed to the landlord is greater than the amount awarded. Should the landlord seek a monetary order for the unpaid rent they must inform the Arbitrator of this credit towards unpaid rent.

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: March 31, 2023

Residential Tenancy Branch