



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

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DECISION

Introduction

The Landlord sought compensation under the *Residential Tenancy Act* (the “Act”). By way of cross-application the Tenants sought the return of their security deposit.

This matter first went to a hearing on August 2, 2024, at which only the Tenants attended. The Landlord filed an application for review, submitting that they had been unable to attend the hearing due to extenuating circumstances (those being that of a fire at one of their properties). After reviewing the application for review, I granted a review hearing. A review hearing was held on August 15, 2024, and this decision is in respect of the two applications. This decision and accompanying order replace the decision and order issued on August 2, 2024.

Issues

1. Is the Landlord entitled to compensation?
2. Are the Tenants entitled to the return of their security deposit?

Evidence and Analysis

In an application under the Act, an applicant must prove their claim on a balance of probabilities. Stated another way, the evidence must show that the events in support of the claim were more likely than not to have occurred. I have reviewed and considered all the evidence but will only refer to that which is relevant to this decision.

The Landlord provided the following affirmed evidence:

1. The tenancy began on February 1, 2023, and ended on April 30, 2024.
2. The monthly rent was \$2,173.50.
3. There was a \$1,050.00 security deposit and a \$1,050.00 pet damage deposit; these deposits remain in trust with the Landlord pending the outcome of this review hearing.

4. As per page 2, section 3 of the *Residential Tenancy Agreement* (the “Agreement”), the “Tenants are responsible for 50% of all utility bills (including city bill, BC Hydro & Fortis)”.
5. The Tenants initialled all sections and pages of the Agreement.
6. The Landlord and the Tenants purportedly agreed to settle all utility amounts at the end of the tenancy. Those amounts are \$2,860.00, which is the amount being sought by the Landlord. Copies of municipal bills, BC Hydro, and FortisBC bills were submitted into evidence. The amount claimed does not include late fees, which have been subtracted from the total amount owing.

The Tenants provided the following affirmed evidence:

1. The Tenants acknowledge that they were responsible for 50% of the utilities.
2. The Tenants asked the Landlord or the Landlord’s agent on at least three separate occasions for copies of the utility bills but were basically ignored.
3. The Tenants were only handed copies of the utility bills after the final inspection.
4. The Tenants were told by the Landlord that copies of the bills would be coming forthwith, but they never came.

Analysis

Section 7 of the Act states that 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 for damage or loss that results. A party claiming compensation must do whatever is reasonable to minimize their loss.

To determine if a party is entitled to compensation, the following four-part test must be met: (1) Did the respondent breach the Act, the tenancy agreement, or the regulations? (2) Did the applicant suffer a loss because of this breach? (3) Has the amount of the loss been proven? (4) Did the applicant take reasonable steps to minimize their loss?

In this dispute, the Tenants were, as set out and agreed to in the Agreement, responsible for paying 50% of the utilities. They did not pay these amounts and as such are found to be in breach of the Agreement. But for the Tenants’ breach of the Agreement the Landlord would not have suffered a loss of \$2,860.00. The amount claimed has, I find, been proven by the presentation of copies of utility bills and a cogent and diligent calculation of amounts owing. Last, the Landlord took reasonable steps to minimize their loss by (a) presenting the amounts owing at the end of the tenancy, and (b) filing an application for dispute resolution.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the Landlord has met the onus of proving its claim for unpaid utilities in the amount of \$2,860.00.

Because the Landlord was successful in its application the Landlord is granted \$100.00 under section 72 of the Act for the cost of the Landlord's application fee.

Pursuant to section 67 of the Act the Landlord is awarded \$2,960.00.

Further, pursuant to subsection 38(4)(b) of the Act the Landlord is authorized and ordered to retain the Tenants' security and pet damage deposits of \$2,100.00 as partial payment toward the amount awarded. The Tenants must pay the balance of \$860.00. A monetary order for this amount is granted to the Landlord, who must serve a copy of the monetary order upon the Tenant.

Conclusion

The decision and order dated August 2, 2024, are hereby set aside.

The following decision and order are now made:

1. The Tenants' application is dismissed without leave to reapply.
2. The Landlord's application is granted.
3. The Landlord shall retain the Tenants' security and pet damage deposits.
4. The Landlord is granted a monetary order for \$860.00.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: August 16, 2024

Residential Tenancy Branch