



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, FF

Introduction

This hearing was convened in response to applications by the landlords and the tenant.

The landlords' application is seeking orders as follows:

1. For a monetary order for unpaid rent and utilities; and
2. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. Dispute an additional rent increase;
2. To cancel an notice to end tenancy for unpaid rent;
3. For a monetary order for the cost of emergency repairs;
4. To have the landlord comply with the Act; and
5. To recover the cost of filing the application.

Both parties appeared, gave 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.

Preliminary matters

Landlords' application

Under the Residential Tenancy Branch Rules of Procedures 2.5, amending an application before the dispute resolution proceeding. An applicant may amend the application by submitting an amended copy to the Residential Tenancy Branch and serve the amended application on the respondent.

On January 5, 2015, the landlords filed evidence. In their evidence is a monetary worksheet, which added a claim for damages and compensation for loss of revenue. These changes increased their monetary claim from \$2,171.46 to \$5,663.00. However, the landlords' application was not amended in accordance with Rule 2.5 and the additional filing fee was not paid. Therefore, I will only hear the issues as originally stated in their application filed on July 23, 2014. The landlords are at liberty to file an application for damages.

Tenant's application

On August 6, 2014, the tenant amended their application by removing several issues of dispute. The only issues that were identified in the amended application were as follows: For a monetary order for the cost of emergency repairs, for money owed or compensation under the Act and to recover the filing fee.

However, the amended application provided no details of the monetary order requested as no amount was specified and a monetary worksheet was not completed and filed with the amended application.

Section 59 (2) of the Act states an application for dispute resolution must include full particulars of the dispute that is to be the subject of the dispute resolution proceedings. as the principles of natural justice require that a person be informed and given particulars of the claim against them, this would include details of the monetary amount requesting. I find the tenant has not complied with section 59 of the Act. Therefore, I dismiss the tenant's application with leave to reapply.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent and utilities?

Background and Evidence

The parties agreed the tenancy began on May 1, 2013. Rent in the amount of \$1,400.00 and utilities in the amount of \$150.00 were payable on the first of each month. A security deposit of \$700.00 and a pet damage deposit of \$400.00 were paid by the tenant. The tenancy ended on July 31, 2014

The landlords claim as follows:

a.	Unpaid rent and utilities for July 2014	\$1,550.00
b.	Difference in utility charges	\$ 621.46
c.	Filing fee	\$ 50.00
	Total claimed	\$2,221.46

Unpaid rent and utilities for July 2014

The landlord testified that tenant failed to pay rent and utilities for July 2014. The landlord seeks to recover the amount of \$1,550.00.

The tenant agreed rent and utilities were not paid for July 2014.

Although the parties gave evidence on loss of rent for August 2014, loss of rent was not an issue to be determined in the landlords' application. As I had previously determined the application was not amended in accordance with the rules. Therefore, I have not considered any of the evidence presented on that issue. The landlords are at liberty to file an application for damages for loss of rent

Difference in utility charges

The landlords testified that there was an agreement that the tenant would pay a monthly charge towards utilities with the difference calculated at the end of every year. The landlord's seek to recover the amount of \$621.46.

The landlord's testified that they did not have this agreement in writing.

The tenants deny any additional money is owed.

Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the landlord has the burden of proof to prove their claim.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Unpaid rent and utilities for July 2014

Section 26 of the Residential Tenancy Act states:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The evidence of the both parties was the tenant failed to pay rent and utilities for July 2014. I find the tenant has breached section 26 of the Act when they failed to pay rent when due under the tenancy agreement and this has caused losses to the landlords.

Therefore, I find the landlords are entitled to compensation for unpaid rent and utilities in the amount of **\$1,550.00**.

Difference in utility charges

In this case, both parties have provided a different version of events, I find without further evidence from that landlords, such as a tenancy agreement setting out the term of the utilities that the landlords have failed to prove this portion of their claim. Therefore, I dismiss the landlords' claim for the difference in utility costs.

I find that the landlords have established a total monetary claim of **\$1,600.00** comprised of the above described amount and the **\$50.00** fee paid for this application.

I order that the landlords retain the security deposit of **\$700.00** and pet damage deposit of **\$400.00** to offset the monetary award in partial satisfaction of the claim and I grant the landlords an order under section 67 for the balance due of **\$500.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlords are granted a monetary and may keep the security deposit and pet damage deposit in partial satisfaction of the claim and the landlords are 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: January 27, 2015

Residential Tenancy Branch

