



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement and to recover the filing fee from the landlord for the cost of the application.

The tenant attended the hearing and gave affirmed testimony, however, despite being served with the Tenant's Application for Dispute Resolution and notice of hearing documents by registered mail on December 27, 2014, no one for the landlord attended. The line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony, and the only participant who joined the call was the tenant. The tenant testified that the documents were served on that date and in that manner and has provided a copy of the Canada Post receipt and Registered Domestic Customer receipt showing that date and I am satisfied that the landlord has been served in accordance with the *Residential Tenancy Act*.

All evidence and testimony provided by the tenant has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for overpayment of hydro costs?

Background and Evidence

The tenant testified that this month-to-month tenancy began on March 15, 2013 and ended in March, 2015. Rent in the amount of \$1,000.00 per month was payable in advance on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$500.00 which is still held in trust

by the landlord, and no pet damage deposit was collected. No written tenancy agreement exists. The rental unit is a house on property that also has another house of the same square footage that is tenanted with the same number of occupants as the tenant's rental unit. The property also is farming property with farm animals and outbuildings, such as a barn.

The tenant further testified that hydro is not included in the rent, however heat and the hot water tank are powered by natural gas. The tenant has been paying for hydro that also provides power to the landlord's barn and a portion of the other rental home. The tenant spoke to the other tenant who advised that the hydro paid for that rental home is \$106.00 per month on an equal payment plan, or \$2,544.00 for 24 months. The tenant's rental unit has an equal payment plan of \$610.00 per month. The tenant actually paid \$10,008.06 for the same 24 month period.

The landlord acknowledged that some hydro billing relief was due to the tenant by reducing rent by \$200.00 per month for 3 months in 2013 for the usage to farm animals for heat in the winter months. The tenant provided a letter by hand to the landlord on December 5, 2014 requesting that hydro account be placed in the landlord's name and to reimburse the tenant for overpayment. The tenant provided another letter to the landlord on December 16, 2014 requesting the same relief and has provided a copy of the letter for this hearing. The tenant testified that the landlord's response was that if the tenant didn't like it, the tenant should move out.

The tenant moved out of the rental unit the week before this hearing because he could not afford to continue to pay the hydro bills. The tenant has not yet provided the landlord with a forwarding address in writing.

The tenant claims \$7,200.00, being \$250.00 per month as an overpayment, as well as \$200.00 per month for the 4 months in 2013 that the farm animals were on the rental property and 7 months during 2014.

Analysis

The *Residential Tenancy Act* does not permit a landlord to require a tenant to pay utilities that are not used by the rental unit exclusively, and where a tenant pays utilities for another rental unit other than his or her own, the landlord can be required to reimburse the tenant for the overpayment. I accept the testimony of the tenant that the utility bills were astronomically high in comparison to the other rental home forcing the tenant to move out. Further, having found that the landlord has been served in accordance with the *Residential Tenancy Act*, I also find that the landlord had sufficient notice to attend the hearing and dispute the tenant's claims. In the absence of any evidence or testimony to the contrary, I find that the tenant is entitled to recovery of the overpayment.

In considering the amount of overpayment, the tenant testified that the landlord reduced rent by \$200.00 per month for 3 months in the winter of 2013 and as a result, I find that the landlord has acknowledged some responsibility. I am satisfied that the tenant has paid \$10,008.06 over the 2

year tenancy and the other rental paid \$2,544.00 for the same period. Adding the 2 together is \$12,552.06. The tenant testified that the homes are the same square footage and had the same number of occupants, so each paying half of the total hydro is \$6,276.03. The tenant paid \$10,008.06 for an overpayment of \$3,732.03.

If that calculation is used, each of the tenants contributes to the farm. Having found that the landlord acknowledged \$200.00 per month while the cows were on the property, and considering the tenant's testimony that the cows were there for 4 months in 2013 and 7 months in 2014, the sum is \$2,200.00, less the \$600.00 that the landlord has provided by way of rent reduction for 3 months, or \$1,900.00.

In summary, I find that the tenant has established a monetary claim as against the landlord in the amount of \$5,632.03.

Since the tenant has been successful with the application, the tenant is also entitled to recovery of the \$100.00 filing fee.

With respect to the security deposit, the *Act* states that a landlord must return a security deposit in full or apply for dispute resolution claiming against the deposit within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. The tenant has not yet provided a forwarding address in writing, and I leave it to the parties to deal with the security deposit in accordance with the *Act*.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$5,732.03.

This order is final and binding and may be enforced.

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 20, 2015

Residential Tenancy Branch

