



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNDC, FFL

Introduction

On November 20, 2020, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for an order of possession based on a notice to end tenancy; a monetary order for money owed or damage or loss; and to recover the cost of the filing fee.

The matter was set for a conference call hearing. The Landlord and Tenant attended the teleconference.

At the start of the hearing I introduced myself and the participants. The Landlord and Tenant provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they have exchanged the documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

On December 15, 2020 the parties participated in a dispute resolution hearing. The Arbitrator found that the tenancy ended on November 15, 2020 when the Tenant vacated the rental unit.

Since the tenancy has already ended, the Landlord's request for an order of possession for the rental unit based on the issuance of a One Month Notice to End Tenancy for Cause is not required and is dismissed.

The hearing proceeded based on the Landlord's monetary claims.

Issue to be Decided

- Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss?

Background and Evidence

The Landlord and Tenant testified that the tenancy began on June 5, 2018 on a month to month basis. Rent in the amount of \$1,200.00 was to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a \$600.00 security deposit and a \$600.00 pet deposit. The Tenant lived in the lower rental unit on the property with an upper rental unit occupied by other tenants living above her. The tenancy ended on November 15, 2020.

The Landlord provided a copy of the tenancy agreement and one-page addendum. The tenancy agreement provides that water and sewage is included in the rent. The tenancy agreement addendum contains the following term:

The Tenant is responsible for 40% of the utility costs associated with the property. Utilities will be paid to the Landlord together with the rent on the first of each month. If after a few months' consumption is high then the utilities will be adjusted to 50%.

Water/ Sewer Costs

The Landlord testified that water and sewer costs are supposed to be included in the rent; however, in 2019 the water bill amount doubled. The Landlord stated that the Tenant would leave the water hose running for hours in the front and back of the house.

The Landlord is seeking compensation for the cost difference between 2018 -2019 and 2019 - 2020. The Landlord is seeking \$437.48.

In reply, the Tenant testified that she would never leave the water running. She testified that the Landlord has forgotten that the daughter and son of the upper tenants moved

back into the rental unit in February 2019. The Tenant submitted that the additional occupants increased the amount of water being used on the property. The Tenant testified that in May 2019 the Landlord reduced her share of utility costs to 30%. The Tenant testified that the daughter of the upper Tenants moved out of the unit in October 2020.

In reply, the Landlord stated that the tenancy agreement signed in 2016 with the upper tenants was based on 4-person occupancy. The Landlord acknowledged that she had reduced the Tenant's share of utility costs to 30%.

Gas Utility Costs

The Landlord testified that the Tenant failed to pay a gas bill from July 2020 and September 2020. The Landlord testified that the Tenant owes \$18.75 for the July bill and \$13.31 for the September bill based on 30% of the total bill. The Landlord testified that she recently received a payment of \$144.00 from the Tenant; however, that payment did not cover the amounts listed above.

In reply, the Tenant testified that the Landlord was often wrong with her calculations for the Tenant's share of utility costs. She testified that the Landlord made no mention of an amount outstanding from July and September until after she had moved out on November 15, 2020. The Tenant testified that she paid the Landlord up to November 2020 in full, and that the Landlord accepted the money e-transfer for utility costs with a note saying that the utility is paid in full. The Tenant provided a copy of a money transfer dated Sunday December 20, 2020 for \$144.91 that contains the message: *Paid in full bc hydro and bc fortis all way up to Nov 30, 2020 no monies owing for any other utilities*. The Tenant provided copies of email messages where the Landlord incorrectly calculated the Tenants portion of the bill on a number of occasions.

Hydro Utility Costs

The Tenant paid 30% of the hydro costs; however, the Landlord is seeking to recover 50% of the hydro bills from October 4, 2019 to November 30, 2020.

The Landlord testified that one bill was 33% higher than previous bills and others were 54% higher and 77% higher. The Landlord testified that they were surprised at the high costs, so they had agreed to lower the Tenants percentage of responsibility to 30%.

The Landlord testified that the Tenant had two electric heaters running downstairs and the Tenant was leaving lights on in the unit on purpose. The Landlord testified that the upstairs Tenants have not changed anything with regard to their use of hydro. The Landlord stated that she is not aware whether the upper Tenants son or daughter moved into the upper unit during this period.

In reply, the Tenant stated that it would be foolish for her to run up her own hydro bill. The Tenant stated that the son and daughter of the upper Tenant moved back into the upper unit and that is why the utility costs are higher. The Tenant also stated that the upper tenants introduced an air conditioner into their unit.

The Tenant testified that her son moved out of the unit in August 2020 and she never asked for a reduction based on her single occupancy and the upper unit having four occupants using hydro.

In reply, the Landlord stated that the upper Tenants informed her that they only had one air conditioner unit. When she was asked the date she inquired with the upper Tenants about the presence of an air conditioner, the Landlord replied it was in the summer of 2019. The Landlord stated that she did not ask the upper Tenants about the air conditioner in 2020.

Refrigerator Replacement

The Landlord testified that the Tenant sent her a message saying the refrigerator was breaking because it was not staying cold and she asked for a new refrigerator. The Landlord purchased a used refrigerator and replaced the existing refrigerator. The Landlord stated that when the refrigerator was brought to her father in-laws, they found it to be working perfectly. The Landlord wants the Tenant to pay for the replacement cost of the refrigerator.

In reply, the Tenant testified that she is not a refrigerator repair person. She testified that the freezer was not freezing items. She testified that the Landlord is responsible to maintain the refrigerator and the Landlord could have taken steps to check it out prior to replacing it.

The Landlord replied that they did not want to enter the unit because of the covid 19 pandemic.

Compensation for Stress and Disturbance

The Landlord testified that there was a dispute between the upper Tenants and the lower Tenants regarding use of the common area laundry facilities and yard and the installation of a security camera. The Landlord submitted that the dispute amounts to a disturbance to the Landlord and the upper tenants. The Landlord was asked how she determined the amount of her claim and she replied that it is 20% of the rent for 13 months from October 2019 to November 30, 2020.

The Landlord was asked if she suffered a loss due to the dispute and she initially replied that she has not. The Landlord was asked whether the upper tenants made a claim against her due to a loss of quiet peaceful enjoyment of the property and she replied "no".

When asked to explain the basis of her claim she replied that it is for the stress and anxiety she experienced in having to deal with the dispute between the Tenants.

In reply, the Tenant testified that the upstairs Tenants got a dog which would defecate and urinate at her front door, and the upper Tenants would not clean up after their dog. When the Tenant raised the issue with the upper Tenants it resulted in a dispute.

The Landlord stated that the upper and lower tenants reached an agreement to alternately clean up the dog excrement. The Landlord stated that the Tenant would also park her car in a way that made it difficult for the other Tenants.

In reply the Tenant testified that the Landlord would pile garbage next to her vehicle which resulted in a scratch /dent. The Tenant installed a camera and changed where she parked. The Tenant provided photographs of a scratch and dent on her car.

Shovel

The Landlord testified that the Tenant took a shovel belonging to the upper Tenants when she moved out. The Landlord stated that she purchased a new shovel a few weeks ago. The Landlord did not provide a photograph of the shovel or a receipt for the purchase.

In reply, the Tenant testified that she took the three shovels that she owned when she moved off the property.

Flooring Damage

The Landlord testified that the Tenant is responsible for water damage to the bedroom laminate flooring. She testified that it appears water has seeped into the flooring. The Landlord testified that the laminate flooring needs to be ripped out and replaced. The Landlord provided two photographs of the damaged floor. The Landlord is seeking \$1,000.00 of which \$500.00 is for labor and \$500.00 for materials. The Landlord did not provide a quote from a flooring company for the cost of labor or materials.

The Landlord testified that the bedroom is approximately 350 square feet and the laminate flooring was installed in 2016 and was in good shape at the start of the tenancy in 2018. The Landlord testified that they had installed the laminate flooring themselves.

In reply, the Tenant testified that the floors were not in good shape at the start of the tenancy and she did not do anything to damage the bedroom floor which was in poor shape. The Tenant testified that there was no damage to the floor when she left.

The Tenant testified that the Landlord failed to perform a move in condition inspection with her at the start of the tenancy or at the end of the tenancy.

The Landlord provided testimony confirming that an inspection was not conducted at the start or end of the tenancy. The Landlord stated that she was new to being a Landlord at that time.

The Landlord testified that she took photographs of the bedroom floor the day after the tenancy ended. She submitted that she did not provide photographs showing the condition of the floor at the start of the tenancy.

Security Deposit

The tenancy ended on November 15, 2020, and the Landlord applied for dispute resolution on November 20, 2020 which included a claim to keep the security deposit and pet damage deposit.

Analysis

Section 6(3) of the Act provides that a term of a tenancy agreement is not enforceable if

(a) the term is inconsistent with this Act or the regulations,

- (b) the term is unconscionable, or*
- (c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.*

Residential Tenancy Branch Policy Guideline #1 Landlord & Tenant - Responsibility for Residential Premises provides:

The landlord is responsible for repairs to appliances provided under the tenancy agreement unless the damage was caused by the deliberate actions or neglect of the tenant.

With respect to compensation, Residential Tenancy Branch Policy Guideline #16 Compensation for Damage or Loss provides:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement; loss or damage has resulted from this non-compliance;*
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and*
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.*

Based on the above, the testimony of the Landlord and Tenant, and on a balance of probabilities, I make the following findings:

Water/ Sewer Costs

I have reviewed the tenancy agreement. I find that water and sewage costs are included in the rent. I find that these costs were not subject to a term or condition of tenancy whereby the Tenant would be responsible to pay for these services.

I find that the Landlord is not entitled to recover the increase in cost for these services from the Tenant.

The Landlords claim to recover an increased cost of \$437.48 is dismissed without leave to reapply.

Gas Utility Costs

I have reviewed the tenancy agreement and addendum. I find that the term in the addendum that provides *“if after a few months consumption is high then the utilities will be adjusted to 50%”* is not an enforceable term because it is not expressed in a manner that clearly communicates the rights and obligations under it. The term does not define what high consumption means and therefore the term would allow the Landlord to unilaterally adjust the Tenants portion of utilities to 50%. I find that the Landlord is not entitled to recover additional compensation from the Tenant for gas utility costs.

With respect to unpaid gas costs of \$18.75 for July 2020 and \$13.31 for the September 2020, the Landlord has provided copies of the actual invoices from gas and hydro for a 20-month period of time. However, the Landlord has not provided a ledger or spreadsheet tabulating the actual amount owing for each month and the portion the Tenant was responsible to pay and when and how much payment was received from the Tenant. In order for to determine whether or not the \$144.91 payment for hydro and gas costs made in December 2020 included the July and September 2020 gas charges, the Landlord needs to sufficiently set it out. The Arbitrator and respondent should not have to perform the calculations and organize the information. An Arbitrator is not a forensic accountant for the Landlord responsible to set out the information for the applicant. The Act requires the Landlord to provide the full particulars of the claim and the rules of procedure require an applicant to provide a detailed calculation of the claim being made.

The Landlord's claim to recover unpaid gas utility costs in the amount of \$32.06 is dismissed with leave to reapply. If the Landlord reapplies, the Landlord is required to provide the full particulars and a detailed calculation of the claim being made.

Hydro Utility Costs

I have reviewed the tenancy agreement and addendum. I find that the term in the addendum that provides *“if after a few months consumption is high then the utilities will be adjusted to 50%”* is not an enforceable term because it is not expressed in a manner that clearly communicates the rights and obligations under it. The term does not define what high consumption means and therefore the term would allow the Landlord unilaterally adjust the Tenants portion of utilities to 50%.

I find that the Landlord has not established that the Tenant intentionally ran up the hydro bill and the Landlord is not entitled to recover additional compensation from the Tenant for hydro utility costs. The Landlords claim for compensation for overuse of hydro service is dismissed.

Refrigerator Replacement

I find that the Landlord is responsible for repairs to appliances. It is the Landlord's obligation to provide the Tenant with a working refrigerator. It is the responsibility of the Landlord to service, inspect, or replace the refrigerator. The Landlord chose to replace the refrigerator.

The Landlord's claim to recover the cost to purchase a used refrigerator is dismissed.

Compensation for Stress and Disturbance

A landlord has an obligation under the Act to protect a tenants right to quiet enjoyment of their tenancy including rights to reasonable privacy and freedom from unreasonable disturbance and use of common areas free from significant interference.

The Landlord's claim to be compensated for the stress of having to be involved in the disputes between the upper and lower Tenants living on the residential property is dismissed. The Landlord has an obligation to be involved in such matters and ensure tenants have privacy and are free from unreasonable disturbances, and this effort is a cost of doing business as a Landlord.

The Landlords claim for compensation for feelings of anxiety and stress due to conflict between her Tenants is dismissed without leave to reapply.

Shovel

The Tenant testified that she only took her own tools when she moved out and the Landlord submitted that the upper Tenants believe she took their shovel. The burden of proof rests with the applicant. There is insufficient evidence from the Landlord to prove on a balance of probabilities that the Tenant took a shovel from the property.

The Landlord's claim to recover the cost of a shovel is dismissed.

Flooring Damage

The Landlord failed to conduct an inspection and complete an inspection condition report at the start of the tenancy. A properly completed condition inspection report is considered to be reliable evidence of the state of repair and condition of a rental unit at the start of the tenancy.

The Landlord did not provide any other documentary evidence to show the condition of the floor at the start of the tenancy. The Tenant testified that the bedroom floor was not in good shape at the start of the tenancy. The Tenant denies responsibility for damage to the flooring.

While the Landlord provided photographs showing damage to the flooring at the end of the tenancy, the Landlord is unable to prove the condition of the flooring at the start of the tenancy. The Landlord did not comply with the requirement under the Act to perform an inspection with the Tenant and complete a condition inspection report which would have been reliable evidence on the issue.

The Landlord has not provided sufficient evidence to prove that the Tenant is responsible for damage to the laminate flooring. The Landlord's claim for flooring costs is denied and is dismissed.

Security Deposit

I find that the Landlord made a claim against the security deposit within 15 days from when the tenancy ended. The tenancy ended on November 15, 2020, and the Landlord applied for dispute resolution on November 20, 2020.

Section 24 (2) of the Act provides that the right of the Landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the Landlord does not offer the Tenant opportunities for an inspection and complete an inspection report in accordance with the regulations.

I find that the Landlord failed to inspect the condition of the rental unit with the Tenant at the start of the tenancy. The Landlord's right to claim against the security deposit and/or pet damage deposit for damage is extinguished. This does not mean that the Landlord is barred from making claims for damage, rather it means that the right to claim against and keep the deposits for damage is extinguished.

Monetary Awards

The Landlord was not successful with any of her claims for compensation. Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was not successful with her claims, I decline to order the Tenant to pay the Landlord the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I order the Landlord to repay the security deposit of \$600.00 and the pet damage deposit of \$600.00 to the Tenant. I grant the Tenant a monetary order in the amount of \$1,200.00. For enforcement, this order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

Conclusion

The Landlord was not successful with any of her claims for damage to the rental unit, unpaid utility costs, and money owed or compensation for damage or loss.

The Landlord's claim to recover unpaid gas utility costs in the amount of \$32.06 is dismissed with leave to reapply. The remainder of the Landlord's application is dismissed without leave to reapply.

The Landlord is ordered to repay the security deposit of \$600.00 and the pet damage deposit of \$600.00 to the Tenant. The Tenant is granted a monetary order in the amount of \$1,200.00.

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 20, 2020

Residential Tenancy Branch