



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNR FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for unpaid utilities and to recover the cost of the filing fee.

Service of the hearing documents, by the Landlord were sent via registered mail on September 14, 2010, to the forwarding address provided by the Tenant on the move-out inspection report. The Tenant is deemed to have been sufficiently served the hearing documents on September 19, 2010, the fifth day after they were mailed, in accordance with section 90 of the *Act*.

The Landlord appeared, gave affirmed testimony, was provided the opportunity to present their evidence orally, in writing, and in documentary form. No one appeared at the teleconference hearing on behalf of the Tenant, despite her being sufficiently served notice of today's hearing in accordance with the *Act*.

Issue(s) to be Decided

1. Has the Tenant breached the *Residential Tenancy Act*, regulation, or tenancy agreement?
2. If so, has the Landlord proven entitlement to a monetary claim as a result of that breach?

Background and Evidence

The Landlord testified the Tenant and the *Residential Tenancy Branch* were served evidence which included a copy of the Landlord's application for dispute resolution, the hearing documents, and a copy of the typed calculation for the amount owed for utilities.

She stated that the Tenant and Owner of the property entered into a written fixed term tenancy agreement effective May 30, 2010 and was set to switch to a month to month tenancy after November 30, 2010. Rent was payable on the first of each month in the



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amount of \$650.00 and the Tenant paid \$325.00 on May 30, 2010 as a security deposit. The Tenant was required to pay 1/3 of the utility costs.

The Landlord advised the Tenant provided notice to end the tenancy on August 12, 2010 and then vacated the unit August 31, 2010. A move-out inspection report was completed August 31, 2010 where the Tenant provided her forwarding address as noted on the front page of this decision.

The Landlord stated her firm was hired to manage this tenancy September 3, 2010, after the tenancy had already ended. They are seeking the unpaid utilities for the period the Tenant occupied the unit. She confirmed she did not submit copies of the utility bills into evidence and requested that she be allowed to provide them after the hearing.

Analysis

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

The Landlord confirmed she did not provide the *Residential Tenancy Branch* or the Tenant with a copy of the tenancy agreement or copies of the utility bills as evidence prior to the hearing as required by # 4.1 of the *Residential Tenancy Branch Rules of Procedure*. Considering evidence that has not been served on the other party would



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create prejudice and constitute a breach of the principles of natural justice; therefore, I cannot accept additional evidence from the Landlord after the hearing has been concluded.

In the absence of evidence to support the terms of the tenancy agreement, the actual amounts or billing periods of the utility bills being claimed, and the applicant has the right to make a claim against the Tenant I find the Landlord has provided insufficient evidence to prove the test for loss as listed above. Therefore I hereby dismiss the Landlord's application.

The Landlord has not been successful with their application; therefore I decline to award recovery of the filing fee.

Conclusion

The Landlord's application is HEREBY DISMISSED, without leave to reapply.

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 05, 2011.

Residential Tenancy Branch