



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for unpaid utilities, pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 21 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that the tenant was served with the landlord's application for dispute resolution hearing package ("Application") on September 11, 2015, by way of registered mail. The landlord confirmed that this mail was sent to the rental unit where the tenant continues to reside. The landlord provided a Canada Post receipt and tracking number with his Application. He said that the package was returned to him. The Canada Post website indicates that the package was unclaimed by the tenant. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's Application on September 16, 2015, five days after its registered mailing.

Issues to be Decided

Is the landlord entitled to a monetary award for unpaid utilities?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord testified that this tenancy began on May 1, 2014. Monthly rent in the amount of \$2,100.00 is payable on the first day of each month. A security deposit of \$1,050.00 was paid by the tenant. The landlord provided a copy of the written tenancy agreement. The landlord said that he sold the property to a “new owner” on July 8, 2015 and the new owner assumed the tenancy and the security deposit. The landlord confirmed that the tenant continues to reside in the rental unit, as the new owner has told him that. The rental unit is a whole house.

The landlord seeks a monetary order of \$1,260.86 for unpaid utilities as well as the \$50.00 filing fee for this Application. The landlord said that water, heat and electricity costs are all excluded from the tenant’s monthly rent and this is indicated in the tenancy agreement, along with the phrase “utilities to be covered by tenant.” The landlord seeks \$229.54 for gas costs, \$126.23 for electricity costs, and \$905.09 for City water and sewer costs. The landlord noted that the tenant failed to pay these utilities while living in the rental unit and before the unit was sold to the new owner. The landlord provided invoices for the above costs and testified that he had to pay these costs on behalf of the tenant prior to selling the unit to the new owner. The landlord said that there was a water leak at the rental unit but that he did not charge the tenant any costs for this; he noted that he received a credit from the City for increased costs and accounted for any remaining costs himself.

Analysis

Section 67 of the *Act* states that when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish a claim. In this case, to prove a loss, the landlord must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I find that the landlord provided undisputed evidence at this hearing, as the tenant did not attend. I award the landlord \$1,260.86 for unpaid gas, electricity, water and sewer costs. Water, electricity and heat costs are specifically excluded in the tenant’s tenancy agreement. The landlord provided copies of the invoices to demonstrate the costs. I accept the landlord’s undisputed evidence that he paid for these costs because the

tenant failed to pay as required by her tenancy agreement while residing in the rental unit while the landlord still owned the rental unit.

As the landlord was successful in his Application, I find that he is entitled to recover the \$50.00 filing fee paid for his Application from the tenant.

As the tenant's security deposit was transferred to the new owner, I cannot offset this amount against the landlord's monetary order.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,310.86 against the tenant. The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 11, 2016

Residential Tenancy Branch

