



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DAVID BURR LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, FF

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution wherein the Landlord sought a Monetary Order for unpaid utilities in the amount of \$3,849.68.

Only the Landlord's representatives appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. The Landlord's representatives provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

As the Tenant failed to attend the hearing service of the Landlord's Application materials was considered. The Landlord's Property Manager, C.R., testified the Tenant was served by registered mail on November 23, 2015 to the address provided by the Tenant when she vacated the rental unit. The Landlord also provided in evidence a copy of the registered mail tracking number which is noted on the cover page of this my Decision.

C.R. testified that the registered mail was returned unclaimed to the Landlord on December 17, 2015. *Residential Tenancy Policy Guideline--12. Service Provisions* provides that service cannot be avoided by refusing or failing to retrieve registered mail:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Under the *Act* documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of November 28, 2015 and I proceeded in her absence.

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.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation for unpaid utilities?
2. Should the Landlord recover the fee paid to file their Application for Dispute Resolution?

Background and Evidence

C.R. testified that the tenancy began May 15, 2013 for a fixed term expiring on April 3, 2014. The Tenant then entered into a month to month tenancy following

Introduced in evidence was a copy of the Residential Tenancy Agreement pertaining to the first fixed term. This agreement specifically provides that electricity and heat are not included in the rental payment. C.R. testified that the tenancy continued on a month to month basis following the end of the fixed term on the same terms as provided for in the initial tenancy agreement. C.R. testified that the Tenant as responsible for paying for her own hydro.

C.R. testified that prior to the tenancy beginning the rental home was vacant during which time the Landlord paid for the electrical utility. C.R. further stated that when the Tenant moved in, she did not put the electrical utility in her name despite the clear wording of the tenancy agreement. He stated that the Landlord was not aware that the Tenant had failed to put the electrical utility in her name and only became aware of this when the parties entered into a new fixed term tenancy agreement in November of 2014.

C.R. stated that the Tenant refused to pay the electrical utility and as a consequence the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on February 17, 2015 indicating the sum of \$3,941.19 was owing as of February 6, 2015 (the "Notice")

The parties attended a hearing on April 14, 2015 in which the Landlord's claim for an Order of Possession and a Monetary Order for unpaid rent was resolved by agreement. The Landlord's claim for a Monetary Order for unpaid utilities was dismissed with leave to reapply.

Introduced in evidence by the Landlord was a document listing all payments made for the electrical utility for the rental unit and which totalled \$3,849.68. C.R. confirmed the Tenant failed to pay these amounts despite requests to do so.

Analysis

Based on the undisputed testimony before me, I find the Landlord has proven their claim for the amount of the outstanding utilities in the amount of **\$3,849.68**.

The Tenant was aware the Landlord sought compensation for these amounts as these amounts were the basis of the 10 Day Notice issued in 2015. Further, the Landlord had previously brought forth an application in this regard in 2015. The hearing occurred on April 14, 2015 at

which time the Landlord's claim for compensation for utilities was dismissed with leave to reapply. I accept the Landlord's evidence that they attempted to communicate with the Tenant's legal counsel following the hearing who declined service on behalf of the Tenant. I further accept the Landlord's representative's testimony that they served the Tenant at the address provided by the Tenant. Despite this, the Tenant failed to attend the hearing to dispute the Landlord's claims and the hearing proceeded in her absence and on an undisputed basis.

A review of the original tenancy agreement provided that the electricity and heat were the responsibility of the Tenant. I accept the Landlord's representatives' undisputed testimony that the tenancy continued on the same terms as the original tenancy such that the Tenant continued to be responsible for paying for her own electricity and heat. I further accept the undisputed testimony of the Landlord as well as the document listing the amounts paid by the Landlord in error for the Tenant's utilities as evidence of the amounts owed by the Tenant for her heat and electricity.

As the Landlord has been substantially successful I also award them recover of the **\$50.00** filing fee for a total award of **\$3,899.68**. The Landlord is granted a Monetary Order for this amount and must serve the Order on the Tenant. If necessary this Order may be filed and enforced in the B.C. Provincial Court (Small Claims Division) as an Order of that Court.

Conclusion

The Landlord is granted a Monetary Order in the amount of **\$3,899.68** for the amount of outstanding utilities owed by the Tenant and recovery of the \$50.00 filing fee.

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: July 20, 2016

Residential Tenancy Branch