



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR MNSD FF

Introduction

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

- a monetary order for unpaid utilities, pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72

While the landlords attended the hearing by way of conference call, the tenant did not. The landlords were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlords testified that the tenant was served with the landlord's application for dispute resolution hearing package and evidence on February 14, 2017, by way of registered mail, to the forwarding address provided by the tenant. The landlords provided a Canada Post tracking number in their evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlords' application and evidence on February 19, 2017, five days after its registered mailing.

Issue to be Decided

Are the landlords entitled to a monetary award for unpaid utilities under the tenancy agreement, regulation, or *Act*?

Are the landlords entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Are the landlords entitled to recover the filing fee for this application from the tenant pursuant to section 72 of the *Act*?

Background and Evidence

The landlords testified regarding the following facts. This one year, fixed-term tenancy started in December 2016 with rent set at \$1,100.00 per month, payable on the first of the month. The tenant moved out early on January 31, 2017. The landlords collected a security deposit of \$550.00 at the beginning of this tenancy, and returned \$261.36 to the tenant upon move-out.

The tenant gave written notice to the landlords on January 7, 2017 that he was moving out on January 31, 2017. A copy of this notice was included in the landlords' evidence. The landlords testified that the tenant failed to pay \$288.14 in utilities upon move-out. A copy of the written tenancy agreement, and the utility bills were provided in evidence to support their claim. Section 38(1) of the *Act* requires that landlords, within 15 days of the end of the tenancy or the date on which the landlords receive the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlords to retain the deposit. In this case the landlords retained a portion of the tenant's security deposit, and applied for dispute resolution on February 10, 2017, 10 days after the this tenancy had ended. The landlords also applied to recover the cost of their filing fee.

Analysis

The landlords provided undisputed evidence at this hearing, as the tenant did not attend. I accept the landlords' testimony that the tenant did not pay utilities in the amount of \$288.14 for the gas and electricity consumed during this tenancy, as supported by the invoices submitted in the landlords' evidence. In addition to failing to comply by sections 44 and 45 of the *Act*, I find that the tenant failed to pay their portion of the utilities, as agreed to, for this tenancy. I find the landlords complied with section 38 of the *Act*. Accordingly, I find the landlords are entitled to \$288.14 in unpaid utilities.

The landlords continue to hold the tenant's security deposit in the amount of \$288.14. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain this portion of the tenant's security deposit in satisfaction of the monetary claim.

As the landlords were successful in their application, I find the landlords are entitled to recover the cost of the filing fee for this application.

Conclusion

I order the landlords to retain the tenant's security deposit of \$288.14 in partial satisfaction of the monetary claim.

I issue a monetary order in the landlords' favour in the amount of \$100.00 for recovery of the filing fee. 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: June 20, 2017

Residential Tenancy Branch