



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COLDWELL BANKER PRESTIGE REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S MNDCL-S FFL

Introduction

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

- a monetary award for unpaid rent and utilities pursuant to section 67; and
- authorization to recover the filing fee from the tenant pursuant to section 72.

The tenant did not attend this hearing which lasted approximately 10 minutes. The phone lines were left open for the party to call in to the teleconference for the full duration of the hearing. The corporate landlord was represented by its agent (the "landlord") who 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 they served the tenant with the application for dispute resolution and evidence on or about February 6, 2018 by registered mail. The landlord verbally provided a Canada Post tracking number as evidence of service. Based on the undisputed evidence I find that the tenant was deemed served with the landlord's application package on February 11, 2018, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*.

At the outset of the hearing the landlord made an application requesting to amend the monetary amount of the claim sought. The landlord testified that since the application was filed the tenant has paid the rental arrears but additional utility payments have come due. As the amount of rent and utilities owing changing when payment is made and other bills come due is reasonably foreseeable, I allow the landlord to amend their application pursuant to section 64(3) of the *Act* and Rule 4.2 of the Rules of Procedure from \$2,839.02 to \$2,684.02.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

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

Background and Evidence

The landlord provided undisputed evidence regarding the following facts. This periodic tenancy began in June, 2016. The rental unit is the basement suite of a detached home. The current monthly rent is \$1,000.00 payable on the first of each month. In addition the tenancy agreement provides that the tenant is responsible for paying 20% of the utilities for the building. The tenant continues to reside in the rental unit.

The landlord testified that when the application was filed the utility arrears was \$1,839.20. The landlord submitted into evidence a copy of a spreadsheet prepared by the landlord showing the utility payments made and owing. The landlord also submitted some copies of utility bills for the building. The landlord testified that they issue the tenant both the original utility bills as well as a calculation of the portion that they must pay when bills are received. The landlord testified that the current arrears amount is \$2,684.02 but did not provide any documentary evidence of how this amount is calculated.

Analysis

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. The claimant also has a duty to take reasonable steps to mitigate their loss.

I accept the evidence of the landlord that the tenant is responsible for paying 20% of the utility bills for the rental building as stated on the signed tenancy agreement. I accept the evidence of the landlord that the arrears as at December, 2017 was \$1,839.20. While the landlord testified that the current utility arrears is \$2,684.02 the landlord was unable to submit any documentary evidence in support of this figure. In the absence of

documentary evidence I am not satisfied that the figure submitted by the landlord is an accurate reflection of the arrears for this tenancy.

I do accept the landlord's evidence that there is an arrear of \$1,839.20 as reflected in the ledger, and copies of the original utility bills. Accordingly, I issue a monetary award in the landlord's favour in the amount of \$1,839.20 for unpaid utilities.

As the landlord was successful in their application they may also recover the \$100.00 filing fee.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,939.20. 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: September 4, 2018

Residential Tenancy Branch