



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

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

- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Counsel for the tenant submitted that the landlord was served the notice of dispute resolution package by registered mail on February 27, 2019. The landlord confirmed receipt of the dispute resolution package on February 28, 2019. I find that the landlord was served with this package in accordance with section 89 of the *Act*.

Issues to be Decided

1. Are the tenants entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
2. Are the tenants entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on November 6, 2011 and ended on August 27, 2018. Monthly rent in the amount of \$1,050.00 was payable on the sixth day of each month. A written tenancy agreement was signed by both parties and a copy was submitted for this application. The tenancy agreement states that electricity is included in rent.

Tenant H.W.P. testified that after signing the tenancy agreement he received a copy of it, but he did not realize that electricity was included in the rent. Counsel for the tenants submitted that two months after the tenancy agreement was signed the landlord provided the tenants with a copy of the BC Hydro bill which the tenants paid. Counsel for the tenants submitted that the tenant paid the electricity bill for the subject rental property for the entire duration of their tenancy.

Counsel for the tenants submitted that the tenants only learned that electricity was included in the rent in an arbitration hearing with the Residential Tenancy Branch in October of 2018.

The tenants entered into evidence BC Hydro bills and bank statements showing payments made to BC Hydro for the subject rental property from January of 2012 to July of 2018 totaling \$3,727.95. The tenants are seeking to recover this amount from the landlord.

The landlord testified that electricity was never meant to be included in the rent and that the box was unintentionally selected. The landlord testified that at the time the tenancy agreement was signed he was not proficient in English and that the terms of the tenancy agreement were agreed upon orally between the landlord and the tenant in the Mandarin language.

Analysis

Residential Tenancy Policy Guideline #11 states that there are two types of waiver: express waiver and implied waiver. Express waiver arises where there has been a voluntary, intentional relinquishment of a known right. Implied waiver arises where one party has pursued such a course of conduct with reference to the other party so as to show an intention to waive his or her rights.

I find that the tenants had duty to review the tenancy agreement prior to signing it. I find that the tenants failed in that duty as they were not aware at the time of signing that electricity was included in the rent. I find that the tenants' actions, in paying the electricity for approximately eight years, without complaint to the landlord, constitutes an implied waiver of their right to have electricity included in the rent. I find that the tenants are not entitled to recover damages arising out of their failure to review the tenancy agreement until after the tenancy ended.

I therefore find that the tenants are estopped from pursuing a claim for the cost of electricity for the duration of their tenancy agreement. The tenants' application is dismissed without leave to reapply.

As the tenants were not successful in their application, I find that they are not entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

Conclusion

The tenants' application is 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: June 10, 2019

Residential Tenancy Branch