



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNRL, FFL**

Introduction

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

- a monetary order for unpaid utilities in the amount of \$990.05 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 1:40 pm in order to enable the tenants to call into this teleconference hearing scheduled for 1:30 pm. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord testified that the tenants was served the notice of dispute resolution form and supporting evidence package via registered mail on April 15, 2019. The landlord provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. I find that the tenants are deemed served with this package on April 20, 2019, five days after the landlord mailed it, in accordance with sections 89 and 90 of the Act.

Issue(s) to be Decided

Is the landlord entitled to:

- 1) a monetary order for \$990.05 for unpaid utilities; and
- 2) recover the filing fee?

Background and Evidence

The parties entered into an oral tenancy agreement starting. The landlord testified that monthly rent was \$1250 plus 75% of the hydro bill. The landlord did not collect a security deposit.

The landlord testified that the tenants vacated the rental unit on March 1, 2019 but did not pay any part of the final hydro bill. The landlord testified that their share of the final hydro bill was \$990.05. She testified that she paid this amount to the hydro company and that she attempted to collect it from the tenants.

On March 7, 2019, the landlord sent a letter the tenants demanding that they pay this amount. She testified that, to date, they have not paid any part of the hydro arrears.

The tenant failed to enter a copy of the hydro bill into evidence. The landlord testified that she attached a copy of it to the letter she sent the tenants. She testified that it was an oversight that the hydro bill was not submitted into evidence.

The landlord provided no documentary evidence showing the she was charged any amount for hydro.

Analysis

Residential Tenancy Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application.

In this case, the landlord bears the onus to prove:

- 1) that the tenant breached the tenancy agreement;
- 2) that the landlord suffered damage as the result of this breach;
- 3) the amount of damage suffered by the landlord; and
- 4) that the landlord attempted to minimize the damage.

On the evidence before me I cannot find that the landlord suffered any damage as the result of the tenants' breach, or that, if she did, what that amount would be.

The landlord must, where possible, provide documentary evidence to support her claim. In this case, there is no basis in documentary evidence for me to conclude that the landlord suffered any loss, or that, if she did, it was in the amount she claimed. I find that the landlord failed to meet the onus of proof.

The landlord testified that it was an oversight that she did not include the hydro bill in her evidence. I accept this testimony as true.

As such, I dismiss the landlord's application, with leave to reapply.

As the landlord has been unsuccessful in her application, I decline to award her the recovery of her filing fee.

Conclusion

I dismiss the landlord's application, with 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: October 02, 2019

Residential Tenancy Branch