



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPR, MNRL-S**

Introduction

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

- an Order of Possession pursuant to section 55; and
- a monetary order for unpaid rent pursuant to section 67.

The tenant did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The landlord attended 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 notice of application and evidence personally on or about June 11, 2020. I am satisfied based on the undisputed testimony that the landlord served the tenant with the materials on that date in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award as claimed?

Background and Evidence

The landlord submits that this tenancy began sometime in 2019 though they were uncertain of the date. No written tenancy agreement was submitted into evidence though the landlord claimed one existed. The landlord testified that the monthly rent is

\$1,000.00 payable on the first of each month and that the tenant is responsible for paying a portion of the utilities for the rental building.

The landlord submits that there is an arrear of utility and rent as at the date of the hearing. The landlord submitted into documentary evidence some of the utility bills for the building.

The landlord also seeks an Order of Possession and said that they issued a notice to end tenancy though none was submitted into documentary evidence.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. 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 of the *Act* 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.

In accordance with Residential Tenancy Rule of Procedure 6.6 the onus is on an applicant to establish their claim on a balance of probabilities.

In the present case I find that the landlord's application is so bereft of details that I am unable to determine that the evidentiary onus has been met. The landlord's testimony was vague, often contradicting their own earlier statements, and not supported in the documentary evidence submitted. I find the landlord's testimony to be insufficient to determine that there is an enforceable tenancy agreement between the parties wherein the tenant is obligated to pay a portion of the utilities. If a signed tenancy agreement form exists, as the landlord submitted at one point during the hearing, it would be reasonable to expect a copy to be submitted into evidence. The only documentary materials submitted by the landlord is a hand written page where they calculate that the amount of utilities owing is \$417.67 and several pages of utility bills for the property.

Furthermore, while the landlord claimed that they issued a Notice to End Tenancy for Unpaid Rent or Utilities, no such document was submitted into evidence.

Based on the evidence I am not satisfied that a proper Notice that conforms to the requirements of section 52 of the Act was issued. I am also not satisfied that there is an obligation on the part of the tenant to pay any portion of utilities or that they have breached such an obligation. I find that the landlord has not met their evidentiary onus for any portion of this application and consequently dismiss it in its entirety without leave to reapply.

Conclusion

The landlord's application is dismissed in its entirety 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: October 5, 2020

Residential Tenancy Branch