



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, MNR, FF

Introduction

This hearing dealt with the landlord's application for a Monetary Order for unpaid rent and utilities, retention of the security deposit and recovery of the filing fee. The tenant did not appear at the hearing. The landlord testified that he sent notification of this hearing to the tenant via registered mail sent to the address verbally provided by the tenant. The landlord provided documentary evidence of the registered mail sent to the tenant. A search of the tracking number showed that the registered mail was refused by the recipient. I find the tenant deemed to be served five days after mailing and I proceeded to hear from the landlord without the tenant present.

Issues(s) to be Decided

1. Has the landlord established an entitlement to a Monetary Order for unpaid rent and utilities?
2. Is the landlord entitled to retain the tenant's security deposit?
3. Award of the filing fee.

Background and Evidence

The landlord testified as follows. The tenant had been a tenant in the rental unit for approximately nine years. The parties entered into a new tenancy agreement May 14, 2007. The tenant was required to pay monthly rent of \$550.10 plus propane costs to the landlord under the terms of the tenancy agreement. The tenant paid a security deposit of \$275.00 on April 30, 2001. The tenant had been behind in rent payments

and propane payments to the landlord for several years. In September 2009 the landlord attended the rental unit and learned that the power had been turned off to the rental unit and that the tenant was using the rental unit for storage. The landlord issued a *10 Day Notice to End Tenancy for Unpaid Rent and Utilities* indicating that the tenant owed \$1,400.10 in unpaid rent as of September 1, 2009 and \$4,765.27 in unpaid utilities as per written demand on May 24, 2008. The Notice was served upon the tenant via registered mail sent to the tenant's box number at the post office. On October 26, 2009 the tenant and landlord met and during that meeting the tenant authorized the landlord to retain his security deposit and acknowledged the amount owed the landlord by signing the landlord's accounting of the rent and utilities owed by the tenant. Also on October 26, 2009 the tenant vacated most of his possessions. The few possessions that remained were placed outside by the new owners of the rental unit on November 4, 2009.

The landlord is seeking a Monetary Order in the amount of \$5,000.00 even though the landlord's records show that the tenant owes more than this amount. The landlord explained that the tenant has significant financial issues.

As evidence for the hearing, the landlord provided a copy of a portion of the tenancy agreement signed May 14, 2007, the Notice to End Tenancy, the written authorization to forfeit the security deposit, the registered mail receipts for service of the Notice and the hearing documents, and an accounting of the amount owed to the landlord for rent and propane.

The landlord's ledger shows that the outstanding rent of \$1,400.20 is comprised of \$300.00 owing for July 2009, \$550.10 owing for August 2009 and \$550.10 owing for September 2009. The ledger shows that the tenant has had a balance owing to the landlord for propane since 2003. The ledgers appear to be signed by tenant and landlord. The ledger shows the last propane fill paid for by the landlord was April 15, 2008. The tenant made the last payment towards the propane costs in December 2008 and at that time \$4,765.27 remained outstanding.

Analysis

The Act recognizes written and oral tenancy agreements and the rights and obligations of both written and oral agreements are enforceable under the provisions of the Act. Where a tenancy agreement is entered into between the parties, any previous tenancy agreement between the parties is ended. In this case, the parties entered into a written tenancy agreement on May 14, 2007 (herein referred to as “this tenancy”). Since I heard the tenant had resided in the rental unit since 2001 I find that the parties had a prior tenancy agreement that ended on May 14, 2007 (herein referred to as “prior tenancy agreement”).

Section 60 of the Act provides that an application for dispute resolution must be made within two years of the date that the tenancy to which the matter relates ends. I find that any propane costs incurred by the landlord before May 14, 2007 were incurred and potentially recoverable by the landlord under the terms of a prior tenancy agreement. Therefore, the landlord is past the time limit to apply for a Monetary Order related to propane costs incurred during a prior tenancy agreement with the tenant. Accordingly, I have only considered propane costs incurred after May 14, 2007. I have applied payments made by the tenant to the oldest propane costs with the effect that all payments made by the tenant during this tenancy were payments towards propane costs incurred under a prior tenancy agreement.

I find sufficient evidence from the landlord's ledger that the landlord incurred the following costs for propane after May 14, 2007 and having been satisfied the landlord made written demand for payment from the tenant, I find the landlord entitled to recover these amounts from the tenant for propane:

October 17, 2007 fill	\$ 803.96
December 5, 2007 fill	638.65
January 10, 2008 fill	538.23
February 20, 2008 fill	540.80
April 15, 2008 fill	<u>393.17</u>
Propane costs recoverable	\$ 2,914.81

Under section 26 of the Act, the tenant is required to pay rent when due under the terms of the tenancy agreement so long as the tenancy remains in effect. I am satisfied that the tenant did not give notice to end the tenancy and the tenant did not vacate the rental unit until October 2009. Therefore, I approve the landlord's request for unpaid rent for the months of July, August and September 2009 in the amount of \$1,400.20.

I authorize the landlord to retain the tenant's security deposit and interest in partial satisfaction of the amounts owed to the landlord. I calculate the interest on the security deposit to be \$15.49. I also award the filing fee to the landlord.

In light of the above findings, I provide the landlord with a Monetary Order calculated as follows:

Propane costs incurred during this tenancy	\$ 2,914.81
Unpaid rent	1,400.20
Filing fee	50.00
Less: security deposit and interest	<u>(290.49)</u>
Monetary Order for landlord	\$ 4,074.52

The landlord must serve the Monetary Order upon the tenant and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The landlord has been authorized to retain the tenant's security deposit and accrued interest. The landlord has also been provided a Monetary Order for the balance of \$4,074.52 to serve upon the tenant.

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: February 5, 2010.

Dispute Resolution Officer