

DECISION

Dispute Codes MNR, FF

Introduction

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

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

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The landlord entered written evidence that he sent a copy of his dispute resolution hearing package to the tenant by registered mail on May 15, 2011. He provided a copy of the Canada Post Tracking Number and Customer Receipt to confirm this mailing. The tenant said that she received one notice from Canada Post regarding this mailing, but did not pick it up. The landlord also provided written evidence that he hired a process server who handed the tenant a copy of the dispute resolution hearing package on July 27, 2011. The tenant confirmed that she received this package from the process server and that this package included the landlord's written evidence on July 27, 2011. I am satisfied that the landlord served these documents in accordance with the *Act*.

At the commencement of the hearing, the tenant requested an adjournment to enable her to have her mother participate in this hearing as a witness. The tenant said that she had not had enough time to prepare for this hearing and stated that her mother looked after much of the involvement with the landlord during the period in dispute due to the tenant's health issues over that period. She testified that she did not submit any written request for an adjournment and only called the Residential Tenancy Branch the previous week to enquire about the possibility of obtaining an adjournment.

The landlord said that this matter has been lingering for some time and that he was interested in obtaining a decision so that he could put this dispute behind him.

In considering the tenant's request for an adjournment, I note that the landlord's dispute resolution hearing package was considered served to the tenant on the fifth day after he sent it by registered mail on May 15, 2011. While the tenant did not choose to pick up this registered mail hearing package, she did receive the package twenty-seven days before this hearing. During that time, she did not submit any written evidence nor submit a written request for an adjournment. If her mother had important evidence regarding her interaction with the landlord, she could have obtained a written statement

from her and entered this into evidence. She did not do so. The tenant also admitted that she owed four month's rent to the landlord.

The tenant failed to pick up the landlord's original dispute resolution hearing package sent to her correct address, prompting the landlord to retain a process server to ensure that she received notice of this hearing. Under the circumstances, I found that the tenant had not demonstrated that there was any valid reason to obtain an adjournment and that she had been provided ample time to prepare for this hearing or request an adjournment. I denied the tenant's request for an adjournment and proceeded with this hearing.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and utilities? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The parties agreed that this tenancy commenced initially as a one-year fixed term tenancy on December 1, 2006. At the expiration of the initial term, the tenancy converted to a periodic tenancy. The parties agreed that no Residential Tenancy Agreement was created for this tenancy. Monthly rent was initially set at \$1,300.00, payable in advance on the first of each month. By the relevant period in dispute, monthly rent had been reduced to \$1,200.00.

Although the landlord had no recollection of receiving a security deposit, the tenant testified that she paid a \$600.00 security deposit in mid-November 2006. Although the tenant said that she had a receipt for this payment, she did not enter that receipt into written evidence. The landlord testified that in order to obtain closure to this matter, he was willing to accept that the tenant had paid a \$600.00 security deposit on or about November 15, 2006 which he continues to hold.

The parties disagreed on the date that the tenant vacated the rental unit. The tenant said that she vacated the rental unit on January 9, 2011 and left the keys to the rental unit for the landlord on that date. The landlord said that this tenancy ended on February 10, 2011 when he obtained access to the rental premises. He testified that the tenant had left the rental unit and apparently allowed someone else to live there in the final stages of this tenancy. The tenant testified that she had a verbal agreement with the landlord to end this tenancy by January 9, 2011. The parties agreed that neither party provided any written notice to end this tenancy.

The landlord applied for a monetary award of \$7,001.46 for unpaid rent and utilities as set out below:

Item	Amount
Unpaid August 2010 Rent (1/2 month's rent)	\$600.00
Unpaid September 2010 Rent	1,200.00
Unpaid October 2010 Rent	1,200.00
Unpaid November 2010 Rent	1,200.00
Unpaid December 2010 Rent	1,200.00
Unpaid January 2011 Rent	1,200.00
Unpaid Utility Bill Charged to Landlord by Municipality	329.11
Unpaid Utility Bill Charged to Landlord by Municipality	72.35
Total Monetary Order Requested	\$7,001.46

The landlord also applied to recover his \$100.00 filing fee for this application from the tenant.

The tenant did not dispute the landlord's claim for September, October, November and December 2010. She said that a cash payment was made for the remainder of her rent owing for August 2010, but the landlord provided no receipt for that payment. She provided no details on when this payment was made. The landlord testified that he has received only one half month's rent for August 2010 since August 1, 2010. He denied the tenant's claim that all of her August 2010 rent was paid. The tenant testified that since she vacated the rental unit on January 9, 2011, she should not be responsible for the landlord's claim for rent for January 2011. She also maintained that her ex-husband had an electricity account with the municipality and that any amount owing from the utility bills were his responsibility.

Analysis

As noted above, there is no dispute regarding the tenant's failure to pay rent from September through December 2010. Consequently, I issue a monetary award in the landlord's favour of \$1,200.00 for each of these months.

Based on the evidence submitted, I find on a balance of probabilities that one-half month's rent remains outstanding for August 2010. The tenant did not provide any receipt or even details as to when her alleged payment of the remainder of the August 2010 rent was made. Under these circumstances, I found the landlord's evidence more

credible than that of the tenant with respect to the landlord's claim for unpaid rent for August 2010. I allow the landlord a monetary award of \$600.00 for that month.

There is a considerable discrepancy between the parties as to when this tenancy ended. The tenant said that she vacated the unit and left the keys for the landlord on January 9, 2011. As the landlord was uncertain whether the tenant had vacated the rental unit, he testified that he did not obtain the keys and vacant possession of the premises until February 10, 2011. The landlord did not claim for unpaid rent for any portion of February 2011.

Section 45(1) of the *Act* requires a tenant to end a month-to-month (periodic) tenancy by giving the landlord notice to end the tenancy the day before the day in the month when rent is due. In this case, in order to avoid any responsibility for rent for January 2011, the tenant would have needed to provide her notice to end this tenancy before December 1, 2010. A tenancy cannot end on the basis of a verbal agreement between the parties. The parties agreed that the tenant did not provide any written notice to end this tenancy. Section 52 of the *Act* requires that a tenant provide this notice in writing.

Under these circumstances, I find that the tenant did not comply with the provisions of section 45(1) of the *Act* and the requirement under section 52 of the *Act* that a notice to end tenancy must be in writing. I find that the tenant is responsible for unpaid rent of \$1,200.00 for January 2011.

The landlord entered into written evidence a copy of a letter from the municipality confirming his contention that he was held responsible by the municipality for \$329.11 in unpaid electric bills stemming from this tenancy. If he did not pay this bill, the municipality would have added this amount plus interest to his property tax bill in accordance with section 258 of the *Community Charter*. I allow the landlord a monetary award of \$329.11 for unpaid utility bills. I dismiss the landlord's application for a monetary award of \$72.35 for additional utility bills as the landlord did not provide any written evidence or invoice to support this claim.

Although the landlord's application does not seek to retain the tenant's security deposit, using the offsetting provisions of section 72, I allow the landlord to retain the tenant's \$600.00 security deposit plus interest in partial satisfaction of the monetary award. As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I issue a monetary Order in the landlord's favour under the following terms which allows the landlord to recover unpaid rent and utilities, and his filing fee for this application, less the retained value of the tenant's security deposit.

Item	Amount
Unpaid August 2010 Rent (1/2 month's rent)	\$600.00
Unpaid September 2010 Rent	1,200.00
Unpaid October 2010 Rent	1,200.00
Unpaid November 2010 Rent	1,200.00
Unpaid December 2010 Rent	1,200.00
Unpaid January 2011 Rent	1,200.00
Unpaid Utility Bill Charged to Landlord by Municipality	329.11
Less Security Deposit Plus Interest (\$600.00 + \$18.54 = \$618.54)	-618.54
Recovery of Filing Fee for this application	100.00
Total Monetary Order	\$6,410.57

The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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*.