



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession, a monetary order for unpaid rent and utilities, and recovery of the filing fee.

Both parties attended the hearing, gave affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and make submissions to me.

Preliminary matter(s)

The parties both stated they had two previous hearings with our office of their other issues.

The parties confirmed that there is a decision of May 11, 2011 that provided an order of possession and a monetary order to the Landlord. The parties confirmed that this decision also ordered the Landlord to retain the security deposit in partial satisfaction of that monetary order. The parties confirmed that the tenancy was reinstated with a new tenancy agreement on July 01, 2011. The parties confirmed that the monetary order has not yet been paid in full by the Tenant. The parties indicated that there is a Small Claims Court hearing scheduled for November 29, 2011 regarding enforcement and payment of the monetary order.

The parties also confirmed that there is a decision of September 19, 2011 that provided an order requiring the Landlord to repair or replace the kitchen and bathroom flooring in the rental unit no later than November 30, 2011.

I find that the issues before me in the Landlord's current Application are not the same issues as have been previously decided and that the parties entered into a new tenancy agreement as of July 01, 2011. As a result I proceeded to hear the Landlord's current Application.

Issue(s) to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to a monetary order for unpaid rent, unpaid utilities, and the filing fee?

Background and Evidence

The Landlord and Tenant agree that their current tenancy agreement commenced on July 01, 2011. The parties agree that the rent is \$750.00 per month and that the tenancy agreement is that rent is due on the first of the month. The parties confirmed that a security deposit was not paid under the new tenancy agreement. The parties agree that the monthly hydro portion to be paid by the Tenant is \$29.60 per month. The tenancy agreement states that the Tenant was also to establish a gas account in her name and pay gas for two of the rental units, although she was only renting one. The Tenant did not establish a gas account.

The Tenant testified that she received the 10 Day Notice to End Tenancy at her rental unit on October 04, 2011 the same date the Landlord posted the Notice at her residence. The Notice to End Tenancy informed the Tenant that the Notice would be cancelled if the outstanding rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice. The Notice stated that the Tenant had until October 14, 2011 to move out of the rental unit. The Tenant did not file an Application to dispute the Notice.

The Tenant confirmed that she is still in the rental unit at this time. The Landlord stated that the Tenant owes \$750.00 rent for November at this time and \$59.20 for hydro for October and November (\$29.60 x 2 months). The Landlord is also requesting \$330.86 for a gas bill, which is in the Landlord's name, for the period July 04, 2011 to October 15, 2011. The Landlord did not provide his calculations in relation to the gas bill and he did not provide a copy of the gas bill as part of his evidence.

The Tenant agreed at the hearing that she owes the Landlord \$750.00 in outstanding rent for November and \$59.60 for outstanding hydro for October and November. The Tenant states that she does not owe \$330.86 for a gas bill, as the gas bill represents the entire residential building comprised of four units, and is in the owner's name and not in her name. The Tenant testified that she can currently only afford to pay rent in two instalments due to her limited income and lack of steady work. The Tenant confirmed that she paid October's rent late in two instalments with \$375.00 on October 17 and \$375.00 on October 28, 2011.

The Landlord provided a copy of the receipt for the October 28 rent payment into evidence and the receipt states "for use and occupancy only". The Tenant confirmed that this is what her receipt stated, however she did not know what it means. The Tenant stated that she would like a new tenancy agreement with the Landlord where she can pay her rent in two payments each month rather than on the first.

The Landlord stated that he expects the rent on the first of the month as stated on the July 01, 2011 tenancy agreement signed by the Tenant. The Landlord stated he is seeking an order of possession and a monetary order for the outstanding rent and utilities plus the filing fee.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the Landlord's evidence that the Tenant was properly served with the 10 Day Notice to End Tenancy for Unpaid Rent on October 04, 2011 in accordance with the Residential Tenancy Act (the "Act") and Policy Guideline.

As the Notice was served by posting at the rental unit, it was deemed to have been served by October 07, 2011, which is three days from the date posted. The Notice states that the Tenant had five days to pay the full amount of the outstanding rent, or apply for Dispute Resolution, or the tenancy would end from the service date. The Tenant did not pay the outstanding rent and did not apply to dispute the Notice to End Tenancy within five days from the date of service. The deadline to do so was October 12, 2011. Although the Landlord indicated that the Tenant had until October 14, 2011 to vacate the premises, the earliest effective date is 10 days from the date of service, thus this is corrected to October 17, 2011 based on the service provisions set out in the Act and the Residential Tenancy Policy Guideline. I find that rent was not paid within five days and the Tenant did not file an Application to dispute the Notice. I also find that Landlord informed the Tenant in writing on the receipt of October 28, 2011 that the Landlord was receiving the late rent for use and occupancy only and that the Landlord did not reinstate the tenancy after the Notice became effective.

Based on the foregoing, I find that the Tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on October 17, 2011, which is 10 days after the effective date of the Notice. Therefore, I find that the Landlord is entitled to an order of possession.

Section 26 of the Act requires a Tenant to pay rent when it is due under the tenancy agreement. In this case, the tenancy agreement between these parties is that rent is due on the first of the month. The Tenant agrees that she did not pay the October rent when it was due and that she owes the Landlord a total of \$750.00 for rent for November 2011. The Tenant also agrees that she did not pay \$59.20 in hydro for October and November 2011 (\$29.60 x 2 months). I find that the Landlord has established a monetary claim of \$809.20.

The Landlord neglected to provide sufficient evidence to support his claim for \$330.86 against the Tenant for the gas bill. The July 01, 2011 tenancy agreement specifically states that the Tenant was to establish an account with the gas provider; however she did not do so and the tenancy proceeded with a gas account in the Landlord's name. The Landlord has copies of the gas bill, but has not provided this as evidence in advance of the hearing. Additionally, the Landlord has not provided a detailed calculation of what the Tenant's portion of the gas bill is or whether the bill represents gas for the whole building or just the Tenant's rental unit. As a result I dismiss the portion of the Landlord's claim for the gas bill.

As the Landlord has mostly succeeded in his Application, I find that the Landlord is entitled to recover the \$50.00 fee for this proceeding. This brings the balance of the amount owing to the Landlord to \$859.20.

I grant the Landlord an order under section 67 for **\$859.20**.

Conclusion

I dismiss the portion of the Landlord's claim for the gas bill.

I find that the Landlord is entitled to an order of possession not later than **two (2) days after service** of this order on the Tenant. This order must be served on the Tenant and may be filed in Supreme Court.

I find that the Landlord is entitled to monetary order pursuant to section 67 in the amount of **\$859.20** comprised of unpaid rent, unpaid utilities (hydro), and the filing fee. This Order must be served on the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The orders accompany the Landlord's copy of this decision.

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: November 15, 2011.

Residential Tenancy Branch