



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF, O

Introduction

This hearing was convened by way of conference call in repose to the landlords application for an Order of Possession for unpaid rent and utilities; for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlord to keep all or part of the tenants security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on February 14, 2012. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlords agent appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession due to unpaid rent and utilities?
- Is the landlord entitled to a monetary Order to recover unpaid rent and utilities?
- Is the landlord entitled to keep the security deposit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

This fixed term tenancy started on November 05, 2011 and expires on April 30, 2012. Rent for this unit is \$980.00 per month and is due on the 1st of each month. The tenant paid a security deposit of \$440.00 on November 22, 2011 and a further \$50.00 on December 02, 2011.

The landlords' agent testifies that the tenant failed to pay rent for January, 2012. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on January 22, 2012. This was posted to the tenants' door and was deemed to have been served three days after posting (photograph provided in evidence). This Notice stated that the tenant owed rent for January, 2012 of \$980.00 and utilities of \$205.61 due on January 04, 2012. The tenant had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on February 01, 2012. The tenant did not pay the outstanding rent or dispute the Notice within five days. Since that time the tenant has not paid rent for February and March, 2012 to the amount of \$1,960.00 and a further sum of utilities is now owed for February, 2012. The total amount of outstanding utilities is now \$439.68. The landlords' agent has requested to amend the application to include unpaid rent for March as the tenant continues to reside in the unit. The total amount of unpaid rent is now \$2,940.00.

The landlord seeks to recover the sum of \$50.00 for interest the landlord had to pay on money borrowed to pay the utility bills. The landlord also seeks to recover the sum of \$200.00 in compensation for sums paid to her agent for acting on the landlord's behalf.

The landlord has applied to retain the tenants' security deposit and any accrued interest in partial payment towards the rent arrears. The landlord has also applied for an Order of Possession to take effect as soon as possible.

The landlord has provided a copy of the tenancy agreement, a copy of the 10 Day Notice to End Tenancy and copies of the utility bills in evidence.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of the landlord's agent.

Section 26 of the Act states: *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

Consequently I find that the tenant has failed to pay rent for January, February and March, 2012 and the landlord is entitled to recover these rent arrears to the sum of \$2,940.00. I have allowed the landlord to amend his application to include unpaid rent for March, 2012 as the tenant continues to live in the rental unit and would be aware that rent is due on the first day of each month. Consequently, the landlord will receive a monetary award to the sum of **\$2,940.00** pursuant to s.67 of the Act.

With regard to the landlords claim for unpaid utilities of \$439.68; I have reviewed the tenancy agreement and find that water, electric and heats are included in the tenants rent. Therefore, the landlord is not entitled to make a claim for the Hydro and water bills and this section of the landlords claim is dismissed.

With regards to the landlords claim for costs for interest incurred because the landlord had to borrow money to pay the utility bills. As the landlord is not entitled to charge the tenant for utilities this section of the landlords claim is also dismissed.

With regard to the landlords claim for \$200.00 in compensation for fees paid to the landlord's agent. If a landlord appoints an agent to act on behalf of the landlord this is deemed to be a cost of doing business and there is no provision under the *Act* for costs of this nature to be awarded. Consequently this section of the landlords claim is dismissed.

I order the landlords pursuant to s. 38(4)(b) of the *Act* to keep the tenant's security deposit of **\$490.00** in partial payment of the rent arrears.

As the landlord has been partially successful in this matter, the landlord is also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

The landlord will receive a monetary order for the balance owing as follows:

Outstanding rent	\$2,940.00
Less Security Deposit	(-\$490.00)
Plus filing fee	\$50.00
Total amount due to the landlords	\$2,500.00

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

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 the effective date of the Notice and grant the landlord an order of possession pursuant to s. 55 of the *Act*.

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$2,500.00**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days** after service on the tenant. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order 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*.

Dated: March 06, 2012.

Residential Tenancy Branch