



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

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.

The tenant and landlord attended the conference call hearing, gave sworn testimony. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

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 tenancy started on September 01, 2008 and a tenancy agreement was signed on August 01, 2008. Rent for this unit is \$900.00 per month plus 50 percent share of the utilities. Rent is due on the 1st of each month. The tenant paid a security deposit of \$450.00 on August 01, 2008.

The landlord testifies that the tenant owed rent for January of \$900.00 the tenant paid \$1,500.00 in February; the tenant paid \$500.00 in March and failed to pay rent for April, and May, 2012.. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on May 02, 2012. This was posted to the tenants' door and was deemed to have been served three days after posting. This Notice stated that the tenant owed rent of \$2,500.00 and utilities of \$728.48 due on May 02, 2012. The tenant had five days to either pay the outstanding rent and utilities or apply for Dispute Resolution or the tenancy would end on May 12, 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 June, 2012 to the amount of \$900.00. The total amount of outstanding rent is now \$3,400.00; the total amount of outstanding utilities is now \$728.57. The landlord seeks an additional sum for utilities of \$100.00 which the landlord has estimated as the latest utility bill has not yet arrived.

The landlord seeks to recover damages for cleaning in the rental unit due to litter and cat feces on the carpet

The landlord has applied to retain the tenants' security deposit of \$450.00 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.

The tenant does not dispute any aspects of the landlords claim with the exception of the landlords claim that the tenant's cat has soiled the carpet in the unit. The tenant explains that he has lost his job but will do everything he can to repay the landlord.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties.

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.

The tenant does not dispute the landlords claim for unpaid rent totaling \$3,400.00. The tenant does not dispute the landlords claim for unpaid utilities. Consequently, I find the landlord is entitled to recover rent arrears to the sum of \$3,400.00 and utilities arrears of \$728.57. The landlord will receive a monetary award to the sum of **\$4,128.57** pursuant to s.67 of the Act.

With regard to the landlords claim for \$100.00 for an estimated utility bill; As the landlord is unable at this time to provide an actual figure for the bill and present a copy of the bill to the tenant with a demand for payment within 30 days I must dismiss this section of the landlords claim with leave to reapply.

With regards to the landlords claim for money owed or compensation for damage or loss due to the condition of the rental unit; I find as the tenant is still residing in the rental unit at this time this section of the landlords claim is premature as the tenant still has access to the unit to ensure the rental unit is left in a clean and sanitary condition at the end of the tenancy. Therefore, this section of the landlords claim is dismissed with leave to reapply.

I order the landlord pursuant to s. 38(4)(b) of the *Act* to keep the tenant's security deposit of **\$450.00** and accrued interest of **\$2.82** 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 and utilities	\$4,128.57.
Less Security Deposit	(-\$452.82)
Plus filing fee	\$50.00
Total amount due to the landlord	\$3,725.75

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 **\$3,725.75**. 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.

The reminder of the landlords claim is dismissed with 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: June 07, 2012.

Residential Tenancy Branch