



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to the landlords' application for an Order of Possession for unpaid rent and utilities; an Order of Possession for cause; 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; and to recover the filing fee from the tenant for the cost of this application.

At the outset of the hearing the landlord advised that the tenant is no longer residing in the rental unit, and therefore, the landlord withdraws the applications for an Order of Possession.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, served by registered mail on July 27, 2013. Canada Post tracking numbers were provided by the landlord in documentary evidence. The landlord provided evidence to show the tenant signed for these documents on August 01, 2013.

One of the landlords 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 a Monetary Order for unpaid rent and utilities?
- Is the landlord entitled to keep the security deposit?

Background and Evidence

The landlord testifies that this tenancy started on June 01, 2013 for a fixed term of three months which was due to expire on August 31, 2013. Rent for this unit was \$800.00 per month plus 50 percent of the utilities. Rent and utilities were due on the first day of each month. The tenant paid a security deposit of \$400.00 a few days before the tenancy started.

The landlord testifies that a 10 Day Notice to End Tenancy was served upon the tenant on July 07, 2013 in person. This Notice informed the tenant that rent is owed for July of \$800.00 plus \$15.00 for utilities. The Notice also informs the tenant that the tenant has five days to either pay the rent or dispute the Notice or the tenancy will end on July 17, 2013. The tenant paid \$400.00 and asked the landlord to use the security deposit for the remainder of the rent. The landlord testifies that she informed the tenant that the landlords could not do this. The landlord testifies that the tenant did not pay the remainder of the rent for July or the utilities for June and the tenant moved from the rental unit on July 31, 2013.

The landlord testifies that the tenant had also been served with a One Month Notice on June 21, 2012. That Notice had an effective date of July 31, 2013. The landlord testifies that they had started to advertise the unit in June as they expected the tenant to move from the unit at the end of July as the tenant did not dispute that Notice. The landlord testifies that there was a few viewings on the suite with prospective tenants however as the tenant would not tidy the suite before a viewing took place this put off prospective tenants. The landlord testifies that the unit remained advertised on the internet site and

was eventually re-rented for September 01, 2013. The landlords seek a loss of rental income for August of \$800.00.

The landlord testifies that they are waiting on further utility bills to be provided as there will be gas owed for July and Hydro owed for June and July. The landlords had estimated the utilities due for these months at \$30.00 for July for gas and \$45.00 for Hydro in July and \$45.00 for utilities in August.

The landlord seeks to amend their application to include damages and cleaning of the unit.

Analysis

The tenant did not appear at the hearing to dispute the landlords' claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I have considered the landlords documentary evidence and affirmed testimony before me. 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.

I am satisfied with the evidence before me that the tenant failed to pay rent for July and has an outstanding balance of \$400.00. The landlord testified that the tenant wanted the landlord to apply the security deposit to this outstanding rent. A security deposit is an amount held in trust by a landlord until the tenancy ends. A landlord is not required to apply a security deposit to unpaid rent while the tenancy is ongoing. Consequently I find the landlord is entitled to a monetary award to recover unpaid rent for July of \$400.00.

I further find the landlord is entitled to recover unpaid utility bill for gas for June that was due on July 01, 2013 of \$15.00 as indicated on the 10 Day Notice. The landlord has applied for further utility bills of an estimated amount. As I have no evidence before me concerning the actual amounts of these utility bills, the landlord is at liberty to file a new application to recover any further utility charges occurred during the months of the tenancy once these utility bills have been received.

With regard to the landlords claim for a loss of rental income for August, 2013 of \$800.00; a landlord is entitled to be compensated for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. The tenant had signed a fixed term lease agreement which did not expire until August 31, 2013. The landlord has testified that they attempted to re-rent the unit and were unable to do so until September 01, 2013. I therefore find the landlords are entitled to be compensated for a loss of rental income for August, 2013 of \$800.00.

The landlord is therefore entitled to keep the tenants security deposit of **\$400.00** pursuant to s. 38(4)(b) of the *Act* and this sum will be offset against the unpaid rent.

As the landlords have been largely successful with their claim I find the landlords are entitled to recover the **\$50.00** filing fee from the tenant pursuant to section 72(1) of the *Act*. The landlord will receive a Monetary Order pursuant to s. 67 of the *Act* for the following amount:

Unpaid rent for July	\$400.00
Utility for June	\$15.00
Loss of rent for August	\$800.00
Subtotal	\$1,215.00
Less security deposit	(-\$400.00)
Filing fee	\$50.00
Total amount due to the landlord	\$865.00

The landlord requested that I consider their claim for a Monetary Order for damage and cleaning to the rental unit. In the absence of a formal and proper application for that issue, I declined to hear or determine that issue, as to do so, in my view, would not be in keeping with the principles of natural justice as to the requisite process and notice regarding claims in this process.

Conclusion

I HEREBY FIND largely in favor of the landlords' monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$865.00**. The order must be served on the tenant and is enforceable through the Provincial Court 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: August 28, 2013

Residential Tenancy Branch

