



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Prime Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This is an application filed by the Landlord for an order of possession and a monetary order for unpaid rent and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. The Tenant has confirmed receipt of the notice of hearing package and the Landlord's documentary evidence. The Tenant has not submitted any documentary evidence. As both parties have attended and have confirmed receipt of the notice of hearing package and the submitted documentary evidence, I am satisfied that both parties have been properly served.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession?
Is the Landlord entitled to a monetary order?

Background and Evidence

This Tenancy began on August 1, 2013 on a fixed term tenancy until July 31, 2014 as shown but the submitted copy of the signed tenancy agreement. The monthly rent is \$1,050.00 payable on the 1st of each month and a security deposit of \$525.00 was paid on July 27, 2013.

Both parties confirmed that the Landlord served the Tenant with a 10 day notice to end tenancy issued for unpaid rent on November 5, 2013. This notice states that rent of \$1,075.00 was not paid when due on November 1, 2013. The Tenant disputes this notice stating that he withheld rent due to having no hotwater. The Landlord's evidence states that he was informed of a hot water problem on November 7-8 and that a new hot water tank was installed on November 27, 2013. The Tenant stated that he installed the

hot water tank at his own expense and has not been reimbursed by the Landlord. The Landlord then states that rent of \$1,050.00 was paid for December by the Tenant and that it was applied to the November rent arrears. The Landlord then served the Tenant with a 10 day notice to end tenancy issued for unpaid rent dated December 5, 2013 which states that rent of \$1,050.00 was not paid when due on November 1, 2013. The Tenant stated in his direct testimony that he recently sent a money order for January rent of \$1,050.00 to the Landlord. The Landlord disputes this stating that no such payment has been received as of the date of this hearing.

The Landlord seeks an order of possession and a monetary order for \$2,300.00 for unpaid rent for arrears of \$1,050.00 for December, \$1,050.00 for January and \$200.00 in late rent fees.

The Landlord states that late rent payments are addressed in the addendum conditions of the Tenancy agreement, which states that the Landlord may be charged \$4.00 per day every day rent is late. The Landlord confirmed that the \$200.00 was for late fee charges totaling 50 days.

Analysis

I accept the undisputed testimony of both parties and find that the Tenant has been properly served with the 10 day notice to end tenancy issued for unpaid rent. The Tenant confirmed receipt of the 10 day notice in his direct testimony. The Tenant stated that he withheld rent due to a disagreement on the loss of hot water in the rental and that he was not reimbursed by the Landlord. The Tenant did not file for dispute resolution and obtain an order to withhold rent nor did he receive permission from the Landlord to withhold rent for November. The Landlord has established grounds for an order of possession. The Landlord is granted an order of possession for unpaid rent. The Tenant must be served with the order. Should the Tenant fail to comply with the order, the order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

As for the monetary claim, I find based upon the evidence provided by both parties that I prefer the evidence of the Landlord over that of the Tenant. The Tenant has failed to provide sufficient evidence to satisfy me that rent was paid for November and January. The Tenant confirmed in his direct testimony that he withheld rent for November without permission or an order from the Residential Tenancy Branch. The Tenant has failed to provide sufficient evidence to satisfy me that a money order payment of rent was delivered to the Landlord.

I find that the Landlord's claim for late fees of \$200.00 in the Landlord's addendum for \$4.00 per day for 50 days is contrary to the Act and as such is unconscionable and unenforceable.

Section 7 of the Residential Tenancy Branch Regulations states,

Non-refundable fees charged by landlord

7 (1) A landlord may charge any of the following non-refundable fees:

- (a) direct cost of replacing keys or other access devices;
- (b) direct cost of additional keys or other access devices requested by the tenant;
- (c) a service fee charged by a financial institution to the landlord for the return of a tenant's cheque;
- (d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;**
- (e) subject to subsection (2), a fee that does not exceed the greater of \$15 and 3% of the monthly rent for the tenant moving between rental units within the residential property, if the tenant requested the move;
- (f) a move-in or move-out fee charged by a strata corporation to the landlord;
- (g) a fee for services or facilities requested by the tenant, if those services or facilities are not required to be provided under the tenancy agreement.

(2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

As such, the Landlord's claim for \$200.00 in late fees is dismissed.

The Landlord is entitled to recovery of the \$50.00 filing fee. I grant the Landlord a monetary order for \$2,150.00. This consists of unpaid rent of \$2,100.00 and \$50.00 for recovery of the filing fee. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Landlord is granted an order of possession and a monetary order for \$2,150.00.

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: January 15, 2014

Residential Tenancy Branch

