



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order of Possession for unpaid rent and utilities and for a Monetary Order for unpaid rent and utilities.

Service of the original hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*; served in person on July 14, 2014.

The landlord and an agent for the landlord appeared, gave sworn testimony, were 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?
- Is the landlord entitled to a Monetary Order?

Background and Evidence

The landlord testified that this month to month tenancy started on June 09, 2014. Rent for this unit is \$950.00 per month plus \$150.00 for utilities. Rent is due on the first day of each month.

The landlord testified that the tenant failed to pay rent and utilities for July, 2014 leaving an unpaid balance of \$950.00 for rent and \$150.00 for utilities. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent or utilities on July 02, 2014. This was served in person to the tenant on this date. This Notice states that the tenant had five days to either pay the outstanding rent and utilities or, apply for Dispute Resolution or the tenancy would end on July 13, 2014. The tenant did make a payment of \$950.00 for the rent on July 07, 2014; however, did not pay the outstanding utilities or dispute the Notice within five days.

The landlord testified that the tenancy agreement indicates that utilities must be paid of \$150.00 on the first of each month and has provided a copy of the tenancy agreement in documentary evidence. The landlord testified that the tenant was given a copy of the utility bills and should have paid them on the first of each month as agreed on the tenancy agreement.

The landlord seeks to amend their application as rent has now been paid for July but seeks a Monetary Order to recover the unpaid utilities of \$150.00. The landlord seeks an Order of Possession effective as soon as possible.

Analysis

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 am satisfied with the undisputed evidence before me that the tenant failed to pay rent for July, 2014 of \$950.00 on the day it was due but did make this payment on July 07, 2014 just within the allowable five day time frame as indicated on the 10 Day Notice. I refer the parties to s. 46(6) of the *Act* which says that if a tenancy agreement requires a tenant to pay utilities to the landlord and these utilities remain

unpaid after the landlord has given a demand for payment then the landlord may treat the unpaid utilities as unpaid rent and may give Notice to end the tenancy under s. 46 of the *Act*.

It is therefore my decision that the tenant was aware that utilities must be paid on the first day of each month and failed to pay utilities of \$150.00. Subsequently, the landlord has amended their application and is entitled to recover unpaid utilities to the sum of **\$150.00** pursuant to s.67 of the *Act*.

I have reviewed all documentary evidence and accept that the tenant has been served with Notice to End Tenancy pursuant to section 88 of the *Residential Tenancy Act*. The Notice is deemed to have been received by the tenant on July 02, 2014. The Notice states that the tenants have five days to pay the rent or utilities or apply for Dispute Resolution or the tenancy would end. The tenants did pay the outstanding rent within five days but failed to pay the outstanding utilities or 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 section 55 of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$150.00**. 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 landlords 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: September 15, 2014

Residential Tenancy Branch

