



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent and for damage to the unit pursuant to section 67;
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this 1:00 p.m. hearing, although the hearing continued until 1:20 p.m. The landlord's agent attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions. The landlord withdrew the application for an Order of Possession, indicating the tenant was no longer residing in the rental unit. The landlord's application for an Order of Possession is withdrawn.

The landlord's agent testified that he personally posted the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the tenant's door on September 10, 2014. On the basis of this testimony and completed 10 Day Notice provided in documentary evidence and in accordance with sections 88 and 90 of the *Act*, I find that the tenant has been deemed served the 10 Day Notice on September 13, 2014.

The landlord's agent also testified that he sent the Notice of Direct Request Proceeding, with attached materials, to the tenant via registered mail on September 22, 2014. The landlord's agent provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Based on the written submissions of the landlord, the testimony of the landlord's agent and in accordance with sections 89 and 90 of the *Act*, I find that the tenant has been deemed served with the Direct Request Proceeding documents on September 27, 2014, the fifth day after their registered mailing.

Issues to be Decided

Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord's agent provided a copy of the Residential Tenancy Agreement for this tenancy. The agreement began on November 1, 2013 for a fixed term of one year, indicating \$1100.00 per month. The tenant provided a \$550.00 security deposit at the beginning of this tenancy. The landlord's agent testified that this security deposit is still in the landlord's possession. The agreement references an addendum however the landlord's agent testified that no addendum could be found with respect to this tenancy.

The landlord's agent further provided a (financial ledger) that documents the tenant's non-payment of rent and utilities. According to the landlord, the tenant failed to pay the following amounts;

Item	Amount
Unpaid July 2014 Rent	\$100.00
Unpaid August 2014 Rent	100.00
Unpaid September 2014 Rent	1100.00
Unpaid October 2014 Rent	1100.00
Unpaid Utilities owing as of March 2014	369.14
Unpaid Utilities owing as of June 2014	214.72
Total Monetary request amount	\$ 2833.86

The landlord's agent testified that the tenant was informed of her responsibility to pay for utilities, particularly City of Vernon invoices for the residence. The water and garbage were not listed as "included utilities" in the tenancy agreement. The agent referred to the 10 day Notice, which includes the outstanding utility amount of \$583.86. The landlord submitted utilities invoice with handwritten notes indicating the utility amounts were paid online. The bill on file states a previous bill and payment amount of \$369.14 and an amount due of \$214.72 totalling \$583.86. This bill is in the landlord's name and documents fees for water, sewer, garbage and recycling.

The landlord's agent testified that the tenant had abandoned the property on or about October 21, 2014.

Analysis

The landlord has provided undisputed evidence with respect to the unpaid rent. The tenancy agreement supports the veracity of the agent's sworn testimony during the hearing. I find the tenant is responsible to pay the outstanding rent amount of \$2400.00.

There is no specific provision in the tenancy agreement that establishes on the basis of a balance of probabilities, a consensus or agreement that the tenant would pay the City of Vernon utilities bill. Since payment of water and garbage is not a standard term of a tenancy agreement, and this provision is not documented in the evidence provided, I dismiss the landlord's application for a monetary order for the payment of \$583.86 in utilities without leave to reapply.

The landlord's agent testified that the landlord continues to hold the tenant's security deposit of \$550.00 plus interest from November 1, 2013 until the date of this decision. Over that period, no interest is payable on the landlord's retention of the security deposit. Although the landlord's application does not seek to retain the deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord has been successful in this application, I allow the landlord to recover the filing fee from the tenant.

Conclusion

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to obtain a recovery of unpaid rent and the filing fee for this application:

Item	Amount
Unpaid July 2014 Rent	\$100.00
Unpaid August 2014 Rent	100.00
Unpaid September 2014 Rent	1,100.00
Unpaid October 2014 Rent	1,100.00
Filing Fee	50.00
Less Security Deposit	-550.00
Total Monetary Order	\$1900.00

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

The landlord's application for an Order of Possession is withdrawn.

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: November 12, 2014

Residential Tenancy Branch

