



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC

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 or utilities; for a Monetary Order for unpaid rent and utilities; and for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement.

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 application 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 December 18, 2014. Canada Post tracking numbers were provided by the landlord in documentary evidence. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord 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 to recover unpaid rent and utilities?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The landlord provided a copy of the tenancy agreement in documentary evidence. The tenancy agreement indicated that this tenancy started on October 10, 2014 for a fixed term tenancy of one year. Rent for this unit was \$2,450.00 a month and due on the 10th day of each month. The tenant was required to pay their own utilities which remained in the landlord's name. The landlord testified that the tenant failed to pay a security deposit.

The landlord testified that the tenant paid his first month's rent by cheque; however, that cheque was returned by the bank due to insufficient funds (NSF). The tenant kept making promises to pay the rent but failed to do so and a 10 Day Notice to End Tenancy for unpaid rent and utilities was served to the tenant in person on December 03, 2014. This Notice indicated that rent was due of \$4,900.00 on November 10, 2014. The Notice had an effective date of December 12, 2014.

The landlord testified that the tenant failed to pay the rent and has not made any further rent payments. The tenant vacated the rental unit on January 09, 2014. The tenant owes rent at this time of \$7,350.00.

The landlord testified that the tenant failed to pay the utilities from October 30 to November 28 of \$69.89. A copy of the utility bill was provided to the tenant in the landlord's evidence package. The landlord testified that since that time another utility bill

has been received by the landlord; however, this has not been provided in documentary evidence or given to the tenant with a written demand for payment.

The landlord seeks to recover the bank fee incurred for the tenants NSF cheque. The landlord referred to the bank statement provided in evidence showing a bank charge of \$45.00. The landlord testified that as the tenant's cheque was NSF the landlords account went into overdraft and the landlord incurred a fee of \$10.00 and interest was charged of \$1.15. The landlord testified that the tenant promised to pay the rent on November 03, 2014 and the landlord relayed on this rent coming in. When it did not arrive the landlords incurred a further overdraft fee of \$5.00 and interest of \$0.41. The landlord seeks to recover these charges from the tenant.

The landlord testified that as the tenant did not pay the rent due the landlord used her credit card to make personal purchases. The landlord seeks to recover the interest payable on the credit card statements provided in evidence of \$23.32

Analysis

The tenant did not appear at the hearing to dispute the landlord's claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I have carefully considered the landlord's documentary evidence and sworn testimony before me. Section 26 of the Act states:

***26.** 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 any rent for the unit from October 10, 2014 to January 10, 2015 to an amount of \$7,350.00. I find therefore that the landlord has established a claim to recover this amount and a monetary award has been issued to the landlord pursuant to s. 67 of the Act.

With regard to the landlord's claim for unpaid utilities; I am satisfied that the tenant has failed to pay utilities of \$69.89 for the period between October 30 and November 28, 2014. I find therefore that the landlord has established a claim to recover this amount and a monetary award has been issued to the landlord pursuant to s. 67 of the *Act*. With regard to any further utility bills, not yet received by the landlord, or not yet given to the tenant; If the landlord provides any further utility bills to the tenant with a written demand for payment within 30 days and the tenant then fails to pay those utility bills the landlord is at liberty to file a new application to recover those amounts.

With regard to the landlord's claim to recover NSF fees of \$45.00; I refer the parties to the Residential Tenancy Regulations s. 7(1)(d) and s. 7(2) which states:

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

(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;

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

I have reviewed the tenancy agreement and find the agreement does not provide for an administrative fee for the return of a tenant's cheque by a financial institution.

Consequently, pursuant to s. 7(2) of the regulations I find the landlord is not entitled to recover NSF fees incurred or fees for the landlord's overdraft or interest. This section of the landlord's claim is dismissed.

With regard to the landlord's claim to recover interest payable on the landlord's credit cards; I find it is the landlord's choice to use the credit cards to purchase personal items and the interest fees cannot therefore be passed onto the tenant. This section of the landlord's claim is dismissed.

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 **\$7,419.89**. The Order must be served on the respondent. If the respondent fails to pay the Order, the Order 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: January 15, 2015

Residential Tenancy Branch

