



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR, MNR, MNSD, 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 and utilities, pursuant to section 55;
- a monetary order for unpaid rent and utilities, pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

The tenant did not attend the hearing although it lasted approximately 39 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that he personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent, dated January 30, 2015 ("10 Day Notice"), on the same date. The landlord indicated that another tenant that was previously living on the same property, "MJ," witnessed this service. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was served with the 10 Day Notice on January 30, 2015.

The landlord testified that he personally served the tenant with the landlord's application for dispute resolution hearing package ("Application") on February 20, 2015. The landlord indicated that another tenant living on the same property, "NT," witnessed this service. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was served with the landlord's Application on February 20, 2015.

During the hearing, the landlord withdrew his application for an order of possession. Accordingly, this portion of the landlord's application is withdrawn. The landlord testified that the tenant vacated the rental unit on February 28, 2015 and therefore, he no longer required an order of possession. The landlord indicated that he was present when the tenant vacated, the

tenant returned the rental unit keys to him, and the landlord changed the locks in front of the tenant at that time.

Issues to be Decided

Is the landlord entitled to a monetary award for unpaid rent and utilities?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

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

Background and Evidence

The landlord testified that this month to month tenancy began on December 1, 2013 and ended on February 28, 2015. Monthly rent in the amount of \$650.00 was payable on the first day of each month. The tenancy agreement indicates that the tenant must pay his own electricity costs and 40% of the gas utilities. A security deposit of \$325.00 was paid by the tenant on December 1, 2013 and the landlord continues to retain this deposit. The landlord provided a copy of the tenancy agreement with his Application, which was signed by both parties. The rental unit is one bedroom in the lower level of a four-plex house. Another tenant, MJ was occupying a bedroom on the upper level of the house until January 15, 2015. A different tenant, NT, began occupying the same upper level bedroom from January 15, 2015 until present.

The landlord issued the 10 Day Notice, indicating that rent in the amount of \$650.00 was due on April 1, 2014 and utilities in the amount of \$347.72 were due on January 15, 2015. The notice indicates an effective move-out date of February 10, 2015. The landlord confirmed that no payments have been made by the tenant since the 10 Day Notice was served.

The landlord seeks \$650.00 in unpaid rent for April 2014. The landlord stated that he was paid rent directly by social assistance on behalf of the tenant, for most of this tenancy. The landlord stated that he did not receive any rent payment for April 2014 from the tenant, although he requested it many times.

The landlord seeks gas utilities of \$347.72 for the period from October 15, 2014 to January 15, 2015. The landlord seeks gas utilities of \$105.65 for the period from January 16 to February 28, 2015. The landlord did not provide a copy of these gas bills with his Application. He stated that the two upper level unit tenants, MJ and NT, received copies of these gas bills in their own names and paid the gas utilities directly themselves. The landlord indicated that the upper level tenants paid 60% of the gas utilities and the tenant paid the remaining 40%. The landlord indicated that MJ and NT provided copies of the gas bills to the tenant and they requested that the tenant pay them directly for his portion. The landlord provided a letter, dated January 25, 2015, stating that the landlord paid MJ for the tenant's portion of the gas utilities, totalling \$347.72. Both the landlord and MJ signed this letter. The landlord provided another letter,

dated March 2, 2015, indicating that the landlord paid NT for the tenant's portion of the gas utilities for January 16 to February 28, 2015, totalling \$105.65. Both the landlord and NT signed this letter.

The landlord is also seeking to recover the \$50.00 filing fee for this Application from the tenant.

Analysis

Section 26 of the *Act* states that rent must be paid when it is due under the tenancy agreement. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. I accept the landlord's testimony that the tenant failed to pay rent of \$650.00 for April 2014. I accept the landlord's testimony and documentary evidence that the tenant failed to pay utilities of \$347.72. This amount was indicated on the 10 Day Notice served to the tenant and covered the period while the tenant was still residing in the rental unit. I find that the tenant had 30 days written notice of these gas utilities and that the landlord treated these unpaid utilities as unpaid rent on the 10 Day Notice, as per section 46(6)(b) of the *Act*. I accept the landlord's letter signed by a third party, MJ, stating that the landlord paid these gas utilities on behalf of the tenant. Therefore, I find that the landlord is entitled to \$650.00 in rental arrears for April 2014 and \$347.72 for unpaid gas utilities from October 15, 2014 to January 15, 2015.

I do not accept that the tenant had sufficient notice of the gas utilities in the amount of \$105.65 owing from January 16 to February 28, 2015. The amount of this gas bill would not have become due until after February 28, 2015. The tenant vacated the rental unit on February 28, 2015. The landlord paid the outstanding amount on March 2, 2015, as per his letter. The landlord filed his Application on February 12, 2015 and served it on February 20, 2015. This amount was not indicated in the landlord's original Application, although he filed amended applications on February 20 and March 6, 2015, but he did not serve them on the tenant. Accordingly, I dismiss the landlord's claim in the amount of \$105.65 for gas utilities from January 16 to February 28, 2015, with leave to reapply.

The landlord testified that he continues to hold the tenants' security deposit of \$325.00. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord was successful in this Application, I find that he is entitled to recover the \$50.00 filing fee from the tenant.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$722.72 against the tenant as follows:

Item	Amount
Unpaid April 2014 Rent	\$650.00
Unpaid Gas Utilities from October 15, 2014 to January 15, 2015	347.72
Less Security Deposit	-325.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Award	\$722.72

The landlord is provided with a monetary order in the amount of \$722.72 in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The landlord's application for gas utilities in the amount of \$105.65 from January 16 to February 28, 2015, is dismissed with leave to reapply.

The landlord's application for an order of possession was 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: March 13, 2015

Residential Tenancy Branch

