



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF, SS

Introduction

This hearing was convened by way of conference call in response to the landlords' application for an Order of Possession for unpaid rent or utilities; for a Monetary Order for unpaid rent or utilities; for an Order allowing the landlord to serve the tenant in a different way than required by the *Residential Tenancy Act (Act)*; and to recover the filing fee from the tenant for the cost of this application. During the hearing the landlords withdrew their application for a Substitute Service Order as they served the tenant by registered mail.

The tenant and one landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlords provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The landlords served the tenant by registered mail on March 17, 2015. A copy of the Canada Post receipt and tracking number were provided in documentary evidence. The tenant is deemed to have been served this documentation five days after it was sent pursuant to s. 90(a) of the *Act*. The tenant testified that she did not receive the registered mail and only found out about the hearing by an email from the landlord last weekend. The tenant sent documentary evidence in the day before the hearing. This had not been received by the Arbitrator and it was explained that this late service of evidence does not comply with s. 3.15 of the Rules of Procedure and will not be considered for this hearing. I did inform the parties that I will consider one rent receipt for a payment the tenant testified was made on December 29, 2014 if it is included in the tenants evidence once it is received

by the Arbitrator. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure.

Issue(s) to be Decided

- Are the landlords entitled to an Order of Possession for unpaid rent and utilities?
- Are the landlords entitled to a Monetary Order for unpaid rent and utilities?

Background and Evidence

The parties agreed that this tenancy started on October 01, 2013. Rent for this unit was reduced from \$1,200.00 to \$1,000.00. Rent is due on the first of each month. This tenancy started as a fixed term for one year and is now a month to month tenancy. The tenant paid a security deposit of \$600.00 and a \$400.00 deposit for Hydro at the start of the tenancy.

The landlord testified that the tenant owes rent of \$2,100.00. The landlord referred to their documentary evidence in the form of the tenant's record of payments. I have summarized this record as follows:

Date due	Amount due	Paid amount	How and when paid
November 01, 2014	\$1,000.00	\$500.00	November 30, 2014 (cash)
		\$500.00	January 02, 2015(cash)
December 01, 2014	\$1,000.00	\$500.00	January 26, 2015 (cash)
		\$500.00	February 10, 2015 (cash)
January 01, 2015	\$1,000.00	\$400.00	February 23, 2015 (cash)
		\$500.00	March 06, 2015 (emailed)
		\$100.00	March 20, 2015 (emailed)
February, 2015	\$1,000.00	\$400.00	March 20, 2015 (emailed)
		\$500.00	April 02, 2015 (emailed)

The landlord testified that each time the tenant made a payment it was applied to the previously months owed rent. To date the tenant owes \$100.00 for February, 2015 and \$2,000.00 for March and April, 2015.

The landlord testified that the tenant fell behind with her City utility account. The tenant owes \$2,396.28. the landlord referred to a notice they received from the City in which it details the tenant's utility arrears and states that if the account remains unpaid at December 31, 2014, the balance will be transferred to the property taxes of the property to which the service was provided whether the account is in the name of the property owner or in the name of the tenant. The property owner will be responsible for payment. This letter goes on to mention that by the time the landlords receive this notice the account may have been paid, or arrangements made to pay it and to contact the tenant regarding the status of the account.

The landlord testified that they did speak to the tenant and the tenant informed the landlord that she had made arrangements to pay the outstanding utilities to the City on a biweekly basis. The landlord does not know if the tenant has abided by this arrangement and the landlords therefore seek to recover the unpaid utilities of \$2,262.92. The landlords have provided a copy of a letter dated March 16, 2015 in documentary evidence in which they requested the tenant to pay \$2,062.93.

The landlord testified that the male tenant was served a 10 Day Notice to End Tenancy for unpaid rent and utilities on February 23, 2015. This Notice indicated that the tenant owed rent of \$2,000.00 due on February 01, 2015 and utilities of \$2,062.93. The tenant had five days to either pay the outstanding rent of dispute the Notice, or the tenancy would end on March 05, 2015. The landlord testified that the tenant has agreed to pay \$1,600.00 during May, 2015 but will also need to pay the balance of the rent arrears and the rent for May. If the tenant makes these payments as agreed then the landlord will not serve the tenant with an eviction Order. The landlords do however seek an

Order or Possession effective two days after service in the event the tenant does not pay the arrears and rent for May, 2015.

The tenant disputed the landlords' claims the tenant testified that she had got into arrears when her co-tenant was hospitalized. The landlords were very compassionate and agreed to reduce the rent to \$1,000.00 and to accept payments every two weeks when the tenant got paid. The tenant testified that she did not receive the 10 Day Notice as the landlords served it to the other tenant who was later hospitalized with a mental illness.

The tenant testified that an additional rent payment was made on December 29, 2014 of \$500.00 in cash and the landlord provided a rent receipt for this amount. The tenant testified that this was provided in her late evidence as she only found out about the hearing on Saturday April 18, 2015 when the landlord sent the tenant an email. The tenant agreed to provide a copy of this rent receipt to the landlords on the evening of this hearing. The tenant testified that she owes \$1,600.00 in rent to the landlord but this includes rent for May, 2015. The tenant testified that she has three cycles of wages in May and will be able to pay the landlord \$1,600.00 over a biweekly payment.

The tenant testified that she has an arrangement with the City to pay the arrears for the City utilities at \$200.00 every two weeks. The tenant testified that she has already paid off \$900.00 and the landlords are not entitled to a Monetary Order to recover the Utilities of \$2,062.93 as the tenant is still responsible for the utilities and they have not been added to the landlords' taxes.

The landlord testified that the tenant did not make any payments towards rent in December and no rent receipt was issued to the tenant.

The tenant asked the landlord if the landlords are still going to abide by their agreement to accept \$1,600.00 in May, 2015 to satisfy the rent owed to date. The landlord

responded that they will accept the \$1,600.00 but there is more rent owed and the tenant must pay that along with the rent for May, 2015.

Analysis

I have carefully considered all the admissible evidence before me, including the sworn testimony of both parties. I am satisfied from the evidence before me that the tenant owes rent of \$100.00 for February, 2015, \$1000.00 for March, 2015 and \$1,000.00 for April, 2015. I received the tenant's evidence package after the hearing had concluded and find there is no rent receipt for \$500.00 from the landlords dated December 29, 2014. There are two other receipts one dated November 30 for \$500.00 and one dated January 02, 2015 for \$500.00. These are both included on the landlords' record of rent payment. As the tenant has insufficient evidence to show that any further rent payments have been made to the landlords I conclude that the tenant owes rent as stated of \$2,100.00.

With regard to the landlords' claim for unpaid utilities; currently the tenant appears to have an agreement with the City to pay the outstanding utilities. The landlords have not provided a current account from the City showing how much is outstanding to date. The tenant testified that she has paid \$900.00 towards the outstanding utilities. As the utilities remain in the tenant's name I find the tenant is still responsible to adhere to the agreement she has reached with the City concerning the biweekly payment of this debt. Without evidence of the amount left outstanding I am not prepared to issue the landlords with a Monetary Order for an amount that cannot be determined. This section of the landlords' claim is therefore dismissed with leave to reapply in the event an amount is added to the landlords' taxes for the property.

As the landlords claim has merit, the landlords are also entitled to recover the **\$50.00** filing fee for this proceeding.

The landlords will receive a Monetary Order pursuant to s. 67 and 72(1) of the *Act* for the balance owing as follows:

Outstanding rent	\$2,100.00
Filing fee	\$50.00
Total amount due to the landlord	\$2,150.00

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. When there are two tenants residing in the rental unit at the time the Notice is served, the landlords are entitled to serve either of the tenants with the Notice and both tenants are deemed to be served. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay all the outstanding rent within five days nor 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. As this date has since passed I grant the landlords an Order of Possession pursuant to s. 55 of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlords' monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$2,150.00** pursuant to s. 67 and 72(1) of the *Act*. The Order must be served on the Respondent. If the Respondent fails to comply with the Order, the Order 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 upon the Respondent. This Order must be served on the Respondent, if

the Respondent fail to comply with the Order, the Order 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: April 23, 2015

Residential Tenancy Branch

