



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OPR, OPC, MNR, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The Tenant applied for:

1. An Order cancelling a Notice to End Tenancy – Section 47; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord applied for:

1. An Order of Possession - Section 55;
2. An Order for unpaid rent or utilities - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

Preliminary Matters

The Landlord served the Tenant with the application for dispute resolution and notice of hearing by registered mail to the Tenant’s work place on May 13, 2015 as the Tenant was in the process of moving out of the unit. The Landlord earlier sent the Tenant an email informing the Tenant that they were serving him at work and the Tenant responded “10-4”. The Landlord confirmed with the post office that the Tenant signed for the receipt of the registered mail.

Section 89 of the Act requires a landlord to serve a tenant either in person or at the tenant’s residence. Section 71 of the Act provides that a document not served in accordance with section 89 may be found to be sufficiently given or served for purposes of this Act. Given the Landlord’s evidence that the Tenant received the application send through registered mail, despite its service to the Tenant’s workplace and not the Tenant’s residence or forwarding address, I find that the Landlord’s service is sufficiently given for the purposes of the Act.

The Tenant did not attend the hearing. As the Tenant did not attend the hearing to pursue its application I dismiss the Tenant's application. The Landlord was given full opportunity to be heard, to present evidence and to make submissions. The Landlord withdrew the claim for an order of possession as the Tenant moved out of the unit.

Issue(s) to be Decided

Is the Landlord entitled to unpaid rent and utilities and recovery of the filing fee?

Background and Evidence

The tenancy started on November 1, 2014 for a fixed term to end October 31, 2015. Rent of \$900.00 was payable monthly on the first day of each month. At the outset of the tenancy the Landlord collected \$450.00 as a security deposit and \$450.00 as a pet deposit. The tenancy agreement addendum provides that the Tenant will pay 1/3 of the entire utilities for the house within 10 days of receipt of the utility statements. There is no provision for the payment of NSF fees.

On April 10, 2015 the Landlord served the Tenant with a one month notice to end tenancy for cause (the "Notice") by posting the Notice on the door of the unit. The Tenant failed to pay rent for May 2015 and moved out of the unit on or about May 16, 2015. On April 24, 2015 the Landlord mailed the Tenant a letter with utility invoices attached asking for payment of utilities due in the amount of \$171.73.

The Landlord claims unpaid rent for May 2015, lost rental income for June 2015, an NSF fee for the May 2015 returned cheque and unpaid utilities of \$171.73.

Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. Based on the Landlord's undisputed evidence that the Tenant failed to pay the rent for May 2015 and considering the tenancy agreement that provides for the payment of rent on the 1st day of each month, I find that the Landlord has substantiated on a balance of probabilities that

the Tenant owes the Landlord **\$900.00**. As the tenancy agreement does not provide for NSF fees, I dismiss the Landlord's claim for this item.

Given the Landlord's evidence of the request for the payment of utilities, and based on the Landlord's undisputed evidence that the utilities have not been paid, I find that the Landlord has substantiated on a balance of probabilities that the Tenant owes the Landlord **\$171.73** for unpaid utilities.

As the tenancy ended before June 1, 2015 no rent was payable for June 2015. Considering that the Landlord ended the tenancy before June 2015 and provided no evidence that the Tenant did anything to cause the lost rental income, I dismiss this claim. As the Landlord's application had merit I find that the Landlord is entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$1,121.73**. Deducting the combined security and pet deposit of \$900.00 plus zero interest from this amount leaves **\$221.73** owed by the Tenant to the Landlord.

Conclusion

I Order the Landlord to retain the security and pet deposit plus interest of \$900.00 in partial satisfaction of the claim. And I grant the Landlord an order under Section 67 of the Act for **\$221.73**. If necessary, this order may be filed in the Small Claims 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: May 28, 2015

Residential Tenancy Branch

