



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GOBIND GARCHA LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord for an Order of Possession for Landlord’s use of the property and for a Monetary Order for unpaid rent. The Landlord also applied to recover the filing fee for the cost of this Application.

The owner of the company named on the Landlord's Application (the “Landlord”) appeared for the hearing with his wife. However, only the Landlord provided affirmed testimony during the hearing as well as documentary evidence prior to the hearing. There was no appearance by the Tenant during the 30 minute duration of the hearing and no submission of written evidence prior to the hearing. Therefore, I turned my mind to the service of documents by the Landlord to the Tenant.

The Landlord testified that he served a copy of the Application and the Notice of Hearing documents to the Tenant at the rental unit address by registered mail on June 5, 2015. The Landlord also testified that he had served a copy of the same documents also to the Tenant’s rental unit door; this was witnessed by the Landlord’s wife. The Landlord testified that the documents he served by registered mail were returned to him as unclaimed.

Section 90(a) of the Act provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service through a failure or neglect to pick up mail. As a result, based on the undisputed evidence of the Landlord, I find the Landlord effected service pursuant to Section 89(1) (c) of the *Residential Tenancy Act* (the “Act”). The hearing continued in the absence of the Tenant and the Landlord’s testimony and written evidence was carefully considered in this Decision.

The Landlord explained that since making this Application, the Tenant has now vacated the rental unit and therefore, there is no requirement for an Order of Possession.

Issue(s) to be Decided

Is the Landlord entitled to unpaid rent and utilities?

Background and Evidence

The Landlord testified that this tenancy began on September 1, 2013 on a month to month basis. A written tenancy agreement was completed, which was provided in written evidence. Rent under the agreement was established at \$680.00, payable by the Tenant on the first day of each month. The Tenant paid a \$340.00 security deposit to the Landlord at the start of the tenancy which the Landlord still retains. The tenancy agreement also requires the Tenant to pay 25% of hydro costs.

The Landlord testified that the Tenant failed to pay full rent for January 2015 leaving an outstanding balance of \$200.00. The Tenant paid full rent for February and March 2015. On March 23, 2015 the Landlord served the Tenant personally with a notice to end tenancy for the Landlord's use of the property effective on May 31, 2015; this notice to end tenancy was provided into evidence. The Landlord testified that the Tenant failed to pay rent in the amount of \$680.00 for April 2015 and under the provisions of the notice to end tenancy, the Tenant was allowed to not pay rent for May 2015.

The Landlord testified that the Tenant failed to move out of the rental unit on the effective date on the notice to end tenancy. The Landlord testified that he called the Tenant several times to see when she would be vacating the rental unit but his calls were unanswered. The Landlord testified that it came to his attention that on June 9, 2015 the Tenant had abandoned the suite without telling him, leaving all the lights on inside the house and failing to clean the rental unit. As a result, the Landlord now claims for unpaid rent for June 2015 in the amount of \$680.00. The total claim of the Landlord for unpaid rent is \$1,560.00.

The Landlord also claims for unpaid utility bills for the period of January 22, 2015 to May 22, 2015. In support of this the Landlord provided two utility bills relating to this time period, one in the amount of \$864.38 and the other in the amount of \$357.60. The Landlord calculated 25% of these bills for a total claim of \$305.00.

Analysis

Section 26(1) of the Act requires a tenant to pay rent when it is due under the tenancy agreement whether or not the landlord complies with the Act. I accept the Landlord's

undisputed oral testimony that the Tenant failed to pay \$200.00 for January 2015 rent and \$680.00 for April 2015 rent.

I also accept the Landlord's undisputed oral testimony that the Tenant failed to vacate the rental unit on the effective date of the notice to end tenancy. The Landlord was unsure about the exact date the Tenant fully vacated the rental unit but he testified that he did not discover this until June 9, 2015. Therefore, I find the Tenant is also responsible for June 2015 rent in the amount of \$680.00. As a result, I award the Landlord the total amount claimed in unpaid rent for \$1,560.00.

I also find that under the signed written tenancy agreement, the Tenant was required to pay 25% of the hydro for this tenancy. The Landlord provided sufficient evidence in the form of two utility bills showing the total amount that was payable. Therefore, I find the Tenant is responsible for 25% of this amount for a total of \$305.00 claimed by the Landlord $((864.38 + 357.60) \times 0.25)$.

As the Landlord has been successful in this matter, the Landlord is also entitled to recover from the Tenant the \$50.00 filing fee for the cost of having to make this Application, pursuant to Section 72(1) of the Act. Therefore, the total amount awarded to the Landlord is \$1,915.00. The Landlord is issued with a Monetary Order for this amount which may be filed and enforced in the Provincial Court (Small Claims) as an order of that court if the Tenant fails to make payment.

Conclusion

The Tenant has moved out. Therefore, the Landlord's Application for an Order of Possession is dismissed. The Tenant failed to pay rent and utilities under the tenancy agreement. Therefore, the Landlord is issued with a Monetary Order for \$1,915. 00.

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: July 23, 2015

Residential Tenancy Branch

