



Dispute Resolution Services

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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 pursuant to section 67;
- a monetary order requiring the tenant to pay a security deposit; and
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

This application was heard over two hearing dates. This decision should be read in conjunction with the interim decision dated 22 June 2015.

The tenant did not attend either hearing date for this application, although I waited at least twenty minutes on each date in order to enable the tenant to connect with this teleconference hearing scheduled for 0930. The landlord attended both hearing dates and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that she personally served the tenant with the amended dispute resolution package on 29 June 2015. On the basis of this evidence, I am satisfied that the tenant was served with the dispute resolution package pursuant to section 88 of the Act.

Preliminary Issue – Scope of Application

The tenant abandoned the rental unit on 16 July 2015. As possession of the rental unit has returned to the landlord, I find that the landlord's request for an order of possession for unpaid rent is moot and will not consider it.

At the hearing the landlord stated that the tenant had left the rental unit damaged and unclean. The landlord's application does not properly set out this claim. As such, the tenant did not have notice of these claims and I will not consider them as part of this hearing.

The landlord was granted an adjournment so she could amend her application to properly set out the details of her claim for a monetary order and an order of possession. While the landlord did indicate that she was seeking a monetary order, she did not indicate the amount of the monetary order sought in her application. The landlord did include in her details of dispute the allegation that she was owed rent due 27 April 2015, 27 May 2015, and 27 June 2015 as well as utility amounts. Further, the landlord included a monetary order worksheet that set out a claim including these amounts.

Paragraph 64(3)(c) allows me to amend an application for dispute resolution.

As the landlord set out the particulars of her claim in sufficient detail to alert the tenant that she was seeking a monetary order, I am exercising my discretion to amend the landlord's application to include a claim for the amount set out in her monetary order worksheet. This amendment corrects the landlord's technically deficient, but substantively sound application and, as well, avoids further administrative delay in disposing of the landlord's application on its merits.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and utilities? Is the landlord entitled to a monetary order for paying of the tenant's security deposit? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the landlord, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

This tenancy began 27 January 2015. The parties entered into a written tenancy agreement on 21 January 2015. Monthly rent of \$950.00 was due on the 27th of the month. I was provided with a copy of the written tenancy agreement. That agreement set out the following handwritten notation:

1/4 utility (water) bill is tenant's responsibility

The landlord testified that the inclusion of "water" in this notation is an error and that the tenant was responsible for one quarter of all utilities.

The landlord testified that the tenant failed to pay \$754.50 in rent that was due 27 April 2015. The landlord testified that the tenant failed to pay \$950.00 in rent that was due 27 May 2015. The landlord testified that the tenant failed to pay \$950.00 in rent that was due 27 June 2015. The landlord testified that cheques were not honoured for insufficient funds or as "stop payments". The landlord testified that the tenant's last payments were received on or about 21 May 2015: a cheque for \$745.50 and \$400.00 cash.

The landlord provided me with email correspondence between the tenant and landlord. On 8 June 2015, the landlord sets out in her email that the tenant has \$1,145.50 in rent arrears.

The landlord seeks to collect the balance of the tenant's security deposit in the amount of \$475.00.

The landlord seeks payment of utilities in the amount of \$50.00 for the period 24 January 2015 to 31 March 2015 (the "First Utility Amount") and \$75.00 for the period 1 April 2015 to 27 June 2015 (the "Second Utility Amount").

The landlord provided me with a utility bill for the billing period 1 October 2014 to 31 March 2015. That invoice sets out charges of \$273.03 for water use and \$369.00 for sewer use for a total charge of \$642.03. The landlord says that to determine the tenant's portion of this invoice the landlord accounted for one week and two months of

use at a rate of 25%. The landlord says that this amount is the amount claimed as the "First Utility Amount" of \$50.00.

The landlord testified that she estimated the cost of the "Second Utility Amount" as she is only billed biannually for utility services.

Analysis

Subsection 26(1) of the Act sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

The landlord testified that the tenant continued to occupy the rental unit until 16 July 2015. Accordingly, the landlord was entitled to payment of rent due up to and including 27 June 2015. The landlord provided sworn and uncontested testimony that the tenant has rent arrears in the amount of \$2,654.50, which includes arrears due 27 April 2015, 27 May 2015, and 27 June 2015. There is no evidence before me that indicates that the tenant was entitled to deduct any amount from rent. I find, on a balance of probabilities that the landlord is entitled to rent arrears in the amount of \$2,654.50.

The landlord seeks payment of the First Utility Amount and the Second Utility Amount. I reject the landlord's submission that the notation "water" is an error. Unless this error was mutual, there is no basis for rectifying the mistake and the contract reads as it is. I find that the landlord is entitled to recover a prorated amount of the water cost. The daily cost of water was \$1.50 for the period of the First Utility Amount. The tenant's portion of this cost is \$0.375. The tenant occupied the rental unit for 67 days. The landlord is entitled to recover \$25.13 for this period.

The landlord has not provided me with an invoice for the Second Utility Amount as there is no invoice yet rendered. I order that the landlord is entitled to recover the utility amount at the same daily rate of \$0.375. The tenant occupied the rental unit for 107 days in the period of the Second Utility Amount. I find that the landlord is entitled to recover \$40.13 from the tenant for the Second Utility Amount.

The landlord seeks payment of the balance of the tenant's security deposit. As the tenancy has ended, I decline to order that any security deposit be paid from the tenant to the landlord as the landlord is not entitled to hold one.

As the landlord has been successful in her application she is entitled to recover her filing fee from the tenant.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$2,769.76 under the following terms:

Item	Amount
Unpaid April Rent	\$754.50
Unpaid May Rent	950.00
Unpaid June Rent	950.00
First Utility Amount	25.13
Second Utility Amount	40.13
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$2,769.76

The landlord is provided with this order in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) 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.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: August 24, 2015

Residential Tenancy Branch

