



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, MNR, MNSD, CNR, MND, MNDC, OLC, FF

Introduction

This hearing dealt with applications by both the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and for a monetary order for unpaid rent, unpaid utilities, late fees and for the filing fee. The landlord also applied to retain the security deposit in satisfaction of her claim.

The tenant applied to cancel the notice to end tenancy and for an order directing the landlord to comply with the *Act* and for the recovery of the filing fee.

The landlord testified that she served the notice of hearing and evidence package to the tenant in person on September 10, 2015. Despite having been served the notice of hearing and having applied for dispute resolution, the tenant did not attend the hearing. The landlord attended the hearing and was given full opportunity to present evidence and make submissions. Since the tenant did not attend this hearing, his application is dismissed without leave to reapply.

During the hearing the landlord requested that her application to retain the security deposit be dismissed with leave to reapply. Since the tenancy has not yet ended, I dismiss this portion of her claim with leave to reapply. Therefore this hearing only dealt with the landlord's claim for unpaid rent, unpaid utilities, late fees and the filing fee.

Issues to be decided

Is the landlord entitled to a monetary order for unpaid rent unpaid utilities, late fees and the filing fee?

Background and Evidence

The landlord testified that the tenancy started on August 20, 2013. The monthly rent at the end of tenancy was \$900.00, payable on the first of each month. The rent did not include utilities. Prior to moving in, the tenant paid a security deposit of \$430.00.

The landlord filed a copy of the tenancy agreement. A clause in the agreement requires the tenant to pay \$20.00 per day for rent paid after the first of the month. The tenant failed to pay utilities in July 2015 and on July 30, 2015, the landlord served the tenant with a notice to end tenancy. The tenant disputed the notice seven days after receiving it, but failed to attend the hearing.

The landlord testified that the tenant starting moving his possessions out of the unit on August 19, 2015 and by the end of August most of his belongings were gone from the unit. At the time of the hearing the tenant still had some items left inside the unit. The landlord has applied for an order of possession and for a monetary order for unpaid rent, utilities, late fees and the filing fee.

Analysis

Based on the undisputed sworn testimony of the landlord, I accept the landlord's evidence in respect of the claim. The tenant received the notice to end tenancy for unpaid utilities on July 30, 2015 and did not pay utilities within five days of receiving the notice to end tenancy nor did the tenant make application, pursuant to Section 46 to set aside the notice to end a residential tenancy, and the time to do so has expired.

In these situations, the *Residential Tenancy Act* provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the Notice. Pursuant to section 55(2) I am issuing a formal order of possession effective two days after service on the tenant. The Order may be filed in the Supreme Court for enforcement.

The landlord has filed utility invoices to support her claim for unpaid utilities in the total amount of \$398.00. I find that the landlord is entitled to this amount. I further find that the landlord is entitled to unpaid rent for the months of August (\$320.00), September (\$900.00) and October (\$900.00) in the total amount of \$2,120.00.

Residential Tenancy Regulation section 7(1)(d) states that a landlord may charge not more than \$25.00 for late payment of rent. Since the tenancy agreement contains a clause requiring the tenant to pay \$20.00 per day for rent paid after the day it is due, I find that this clause is not valid as it is in contravention of the Residential Tenancy Regulation. Therefore I dismiss the landlord's claim for late fees.

Since the landlord has proven most of her case, she is also entitled to the recovery of the filing fee of \$50.00.

Overall the landlord has established a claim as follows:

| | | |
|----|-------------|-------------------|
| 1. | Utilities | \$398.00 |
| 2. | Unpaid rent | \$2,120.00 |
| 3. | Filing fee | \$50.00 |
| | Total | \$2,568.00 |

I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the amount of \$2,568.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord an order of possession effective **two days after service** on the tenant and a monetary order in the amount of **\$2,568.00**.

The tenant's application is dismissed in its entirety.

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: October 16, 2015

Residential Tenancy Branch

