



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant's Application: CNR, MT, O, OLC

Landlord's Application: OPR, MNR, MND, MNSD, FF

Introduction

This hearing was scheduled to deal with cross applications. The tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and more time to file the application; and, for orders for compliance. The landlord applied for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent, damage to the property, and authorization to retain the security deposit. The landlords appeared at the hearing but the tenant did not.

The landlords confirmed receipt of the tenant's Application for Dispute Resolution and confirmed that he was prepared to respond to it. Since the tenant did not appear I dismissed the tenant's application.

The landlord stated that the tenant vacated the rental unit on August 31, 2015. The landlord submitted that he served his application to the tenant by sending it to the tenant at the rental unit via registered mail on August 20, 2015. The registered mail was successfully delivered. The landlord testified that he served the tenant with the landlord's amended application in person on August 31, 2015 at the rental unit. In the absence of evidence to the contrary, I accepted that the landlord served the tenant with the amended application and I continued to hear the landlord's claims, as amended on August 31, 2015.

The landlord subsequently submitted evidence to the Residential Tenancy Branch with respect to expenses incurred to clean and paint the unit after the tenant vacated. As the landlord did not serve the tenant with these documents or an amended application that included these additional claims I did not permit further amendment of the application as to do so without prior notice to the tenant would violate the principles of

natural justice. The landlords were informed that they remain at liberty to file another application if they wish to pursue the tenant for these additional amounts.

Since the tenant has already vacated the rental unit an Order of Possession is no longer required and I do not provide one with this decision. The remainder of this decision pertains to the landlord's monetary claims against the tenant as amended on August 31, 2015.

Issue(s) to be Decided

1. Has the landlord established an entitlement to recover the amounts claimed, as amended on August 31, 2015?
2. Is the landlord authorized to retain the tenant's security deposit?

Background and Evidence

The parties entered into a verbal agreement for a tenancy that commenced in July 2012 on a month-to-month basis. The tenant paid a security deposit of \$650.00 and was required to pay rent of \$1,300.00 on the 1st day of every month. The tenant was also required to pay the landlord 100% of the hydro and natural gas bills for the property.

The tenant failed to pay rent for July 2015 and on July 30, 2015 the landlord personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice). The Notice indicates rent of \$1,300.00 was due as of July 1, 2015 and utilities in the amount of \$1,790.00 that were demanded on July 18, 2015. The landlord testified that the tenant did not pay the outstanding rent or utilities after receiving the Notice. Rather, the tenant continued to occupy the rental unit throughout August 2015 and did not pay rent for August 2015. In addition, further utilities were incurred for which the tenant did not pay.

By way of the landlord's amended application, the landlord seeks compensation of \$2,600.00 for unpaid rent for July and August 2015 and \$1,848.00 for utilities estimated to the end of August 2015.

Documentary evidence provided by the landlord included copies of: the 10 Day Notice; a signed Proof of Service for the 10 Day Notice; the landlord's written ledger showing utilities incurred and utility payments received from the tenant during the tenancy; various letters written to the tenant by the landlord; and, bank statements demonstrating when rent was paid for the months of May and June 2015.

Analysis

Under the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement. The Act defines tenancy agreement to include agreements entered into orally. I accept the landlord's undisputed evidence that pursuant to their oral agreement the tenant was required to pay the landlords rent of \$1,300.00 every month plus the cost of hydro and natural gas for the property.

I accept the landlord's undisputed evidence that the tenant failed to pay rent for July 2015 and the landlord personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent. Although the tenant failed to dispute the 10 Day Notice he did not present a basis under the Act that would permit him to withhold rent. Accordingly, I award the landlord unpaid rent for July 2015 in the amount of \$1,300.00. Also, considering the tenant did not end the tenancy in a manner that complies with the Act and continued to occupy the rental and August 2015 I grant the landlord's request to recover rent from the tenant for the month of August 2015 in the amount of \$1,300.00.

Based upon the undisputed evidence before me, I accept that the tenant failed to pay the landlord for all of the hydro and gas costs incurred throughout the tenancy and I am satisfied the landlord has incurred a loss in the amount of \$1,848.00 as claimed. Therefore, I grant the landlord's request to recover unpaid utilities from the tenant in the amount of \$1,848.00.

I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the rent owed to the landlord. I also award the landlord the filing fee paid for this application.

In light of the above, the landlord is provided a Monetary Order calculated as follows:

Unpaid Rent: July and August 2015	\$2,600.00
Unpaid Utilities	1,848.00
Filing fee	50.00
Less: security deposit	<u>(650.00)</u>
Monetary Order	\$3,848.00

To enforce the Monetary Order it must be served upon the tenant and it may be filed in Provincial Court (Small Claims) as necessary.

Conclusion

The tenant's application was dismissed. The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance of \$3,848.00 to serve and enforce upon the tenant.

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: November 04, 2015

Residential Tenancy Branch

