



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 was convened as a result of the Landlord's Application for Dispute Resolution seeking relief under the *Residential Tenancy Act* (the "Act"). The Landlord applied for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, authorization to keep all or part of the security deposit, and to recover the filing fee.

The Landlord attended the hearing. The tenant did not. The Landlord was given the opportunity to provide her evidence orally and in documentary form. A summary of the Landlord's evidence, derived from the Landlord's documentary evidence and affirmed testimony, is provided below. I have included only that evidence which is relevant to the hearing.

The Landlord advised the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on March 5, 2016 (the "10 Day Notice"). This was accomplished by leaving a copy with K., an adult who resides with the Tenant, in accordance with section 88(e) of the Act. I am satisfied the Tenant was duly served with the 10 Day Notice.

The Landlord provided further testimony that the Application for Dispute Resolution (the "Application") was served on the Tenant in person on March 25, 2016. The Landlord advised that her friend, D.B., was present when the Application was served. I am satisfied the Tenant was duly served with the Application.

Issues to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent or utilities?
2. Is the Landlord entitled to a monetary order for unpaid rent or utilities, and if so, in what amount?

3. Should the Landlord be granted authority to retain all or part of the security deposit?
4. Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The Landlord submitted into evidence a copy of the written Residential Tenancy Agreement between the parties, dated December 5, 2015 (the "Tenancy Agreement"). The Tenancy Agreement confirms a month-to-month tenancy commenced on December 15, 2015. Rent in the amount of \$1,300.00 per month was due and payable on the first day of each month. Utilities were not included. The Tenant paid a security deposit in the amount of \$650.00.

The Landlord's unchallenged oral testimony confirmed she has not received any rent from the Tenant for the months of March and April 2016, yet the Tenant continues to occupy the rental unit.

Further, the Landlord provided oral testimony confirming the Tenant's portion of utilities is \$407.43, which reflects a portion of the Hydro bill. The Landlord advised the Tenant was provided with a copy of the Hydro bill but has refused or neglected to pay the Landlord.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on the balance of probabilities, I find the following:

Section 26 of the Act requires tenants to pay rent when it is due under the tenancy agreement, unless there exists a right under the Act to deduct all or a portion of it. The Landlord's evidence confirms the Tenant has not paid rent for March and April 2016. There is no evidence before me that the Tenant had authority under the Act to reduce or refuse to pay rent.

Section 46 of the Act requires a tenant to pay overdue rent or dispute a notice within five days after being served with a notice. Failure to do either of these leads to the conclusive presumption that the tenant has accepted the end of the tenancy. The

Tenant was served with the 10 Day Notice on March 5, 2015, but has not paid rent or filed an application for dispute resolution. Accordingly, pursuant to section 46, I find the Tenant is conclusively presumed to have accepted the tenancy ended on the effective date of the 10 Day Notice.

The Landlord has requested an order of possession. In light of the above, and pursuant to section 55 of the Act, I find the Landlord is entitled to an order of possession, which will be effective two days after service on the Tenant.

Further, I find the Tenant owes the Landlord \$2,600.00 in rent for the months of March and April 2016.

Section 46 of the Act also permits a Landlord to treat unpaid utility charges as unpaid rent. I find that the Tenant has been presented with a Hydro bill indicating the Tenant's portion of utilities, which have not been paid. In light of the Landlord's oral testimony, which is supported by the Tenancy Agreement, I find the Tenant owes the Landlord \$407.43 for unpaid utilities.

As the Landlord has been successful in her Application, she is entitled to recovery of the \$100.00 filing fee.

The Landlord wished to have the amount of the security deposit (\$650.00) deducted from the monetary order being sought.

Pursuant to section 67 of the Act, I find the Landlord is entitled to a monetary order in the amount of \$2,457.43, which is calculated as follows:

March rent:	\$1,300.00
April rent:	\$1,300.00
Unpaid utilities:	\$407.43
Filing fee:	\$100.00
<i>LESS security deposit</i>	\$650.00
TOTAL:	\$2,457.43

Conclusion

I grant the Landlord a monetary order in the amount of \$2,457.43.

I grant the Landlord an order of possession, which will be effective two days after service on 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: April 18, 2016

Residential Tenancy Branch