



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPR MNR

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;

This application was originally heard by way of a Direct Request Proceeding and on May 13, 2016 an interim decision was issued adjourning the application to be reconvened at a participatory hearing.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

Issues

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary award for unpaid rent?

Background and Evidence

The tenancy began on June 25, 2012 with a monthly rent of \$700.00 payable on the 1st day of each month. The rent was increased on two separate occasions during the tenancy and as of April 1, 2016 the rent was increased from \$726.00 to \$747.00 per month. The tenant paid a security deposit of \$350.00 at the start of the tenancy which the landlord continues to hold.

The landlord testified that on May 2, 2016 he served the tenant with the 10 day Notice to End Tenancy for unpaid rent or utilities by posting a copy to the door of the rental premises. The tenant acknowledged receiving the 10 day Notice.

The 10 Day Notice indicated the tenant failed to pay rent in the amount of \$647.00 which was payable on May 1, 2016. The landlord testified that this amount was comprised of a \$605.00 personal loan given to the tenant and \$42.00 of unpaid rent. The \$42.00 unpaid rent was the rent increase of \$21.00 per month for April and May 2016. The rest of the rent was paid to the landlord directly from social assistance.

The tenant testified that the rent was paid directly to the landlord and he was not aware that the increase in rent was not being paid.

Analysis

Section 46 of the Act contains provisions by which a landlord may end a tenancy for non-payment of rent by giving notice to end tenancy. Section 46(2) requires that a notice must comply with section 52 [form and content of notice to end tenancy].

Section 52 of the Act states as follows: **(emphasis for ease)**

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) **except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy**, and
- (e) when given by a landlord, be in the approved form.

I find that the landlord's 10 Day Notice to End Tenancy is not effective as it does not accurately state the grounds for ending the tenancy as per the requirements of Section 52 of the Act. The ground for ending the tenancy in this case was unpaid rent. However, a substantial portion of the unpaid rent amount on the 10 Day Notice was made up of a personal loan given to the tenant. The Notice should have accurately reflected the amount of rent that was unpaid which in this case was only \$42.00, not \$647.00 as per the Notice.

The landlord's 10 Day Notice to End Tenancy dated May 2, 2016 is hereby cancelled and of no force or effect. The landlord's application for an order of possession is dismissed.

I grant the landlord a monetary order for only the unpaid rent portion of the claim which is \$42.00. I do not have jurisdiction under the Act to make an award for the amount claimed for a personal loan.

Conclusion

The landlord's 10 Day Notice to End Tenancy dated May 2, 2016 is hereby cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$42.00. Should the tenant 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 16, 2016

Residential Tenancy Branch