



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT OPR CNR MNDC MNR O FF

Introduction

This hearing dealt with applications from both the landlord and the tenant under the Residential Tenancy Act ("the Act"). The landlord applied for an Order of Possession for Unpaid Rent pursuant to section 55; a monetary order for unpaid rent and utilities pursuant to section 67; and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

This tenant applied for more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent pursuant to section 66; cancellation of the landlord's 10 Day Notice pursuant to section 46; and authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant did not attend although the 11:00am teleconference continued until 11:14 am. The landlord was present. With respect to the tenant's failure to attend this hearing, Rule 10.1 of the Rules of Procedure provides as follows:

The dispute resolution proceeding must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the dispute resolution proceeding in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

In the absence of the tenant's participation in this hearing to support their application and given the sworn evidence provided by the landlord, **I order the tenant's application dismissed without liberty to reapply.**

The landlord testified that, as a result of some negotiations prior to this hearing, the tenant paid \$3000.00 towards an outstanding debt and entered into an informal agreement regarding further outstanding arrears. Based on these negotiations, the landlord withdrew his application for an Order of Possession but sought a monetary order for unpaid rent, utilities and to recover his filing fee.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent and utilities?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

This tenancy began on September 1, 2015 as a one year fixed term tenancy and continues as of the date of this hearing. The rental amount of \$2100.00 is payable on the first of each month. The rental agreement submitted as evidence shows that the tenant is also required to pay 65% of all utilities for the residential premises. The landlord continues to hold a \$1050.00 security deposit and a \$250.00 pet damage deposit paid by the tenant at the outset of the tenancy.

The landlord testified that the tenant has not made payments towards the utilities for the months of January 2016 to July 2016. He provided copies of the utility bills for these dates and calculated 65% of each bill reaching a total as follows,

Utility Bills	Amount
Water: January 16 – June 16 billing date 3 bills @ 65% of totals = 69.62 + 82.06 + 70.87	\$222.55
Gas: January 16 – June 16 billing date 6 bills @ 65% = 41.73 + 37.49 + 46.52 + 43.83 + 32.79 + 34.32	236.68
Electricity: March 16 – June 16 billing date 693.10 + 529.60 + 345.42	1568.12
Total Amount	\$2027.35

The landlord provided sworn, undisputed evidence that the tenant has not paid rent for June, July and August 2016 for a total in rental arrears of \$2100.00 x 3 = 6300.00. The landlord provided candid and consistent testimony with respect to the tenant's failure to pay rent and utilities. The landlord also submitted correspondence with the tenant regarding tenancy issues, particularly the payment of rent and utilities.

Based on the tenant's failure to pay the rent or the utilities, the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities dated June 2, 2016. The landlord testified that, since the issuance of the notice, the tenant has agreed to pay the outstanding amounts. He sought a monetary order to support that informal agreement. He withdrew his application for an Order of Possession.

Analysis

I accept the testimony, supported by documentary evidence submitted by the landlord that the tenant has failed to pay rent and his portion of utilities as outlined in the residential tenancy agreement. I accept the testimony of the landlord that he has reached an informal agreement with the tenant that the tenancy will continue and the tenant will pay the outstanding amounts to the landlord.

Based on the evidence before me, I find that the landlord is entitled to the outstanding rent and utilities owed by the tenant. The tenancy agreement provided as evidence for this hearing includes the \$2100.00 rental amount and a condition that the tenant pay 65% of utilities and the landlord submitted the utility bills for this residence. He provided sworn undisputed evidence that, as well as failing to pay rent for the months of June, July and August 2016, the tenant has not paid the utility bills as indicated in the table above.

The landlord has shown that the tenant resided in the rental unit from September 1, 2015 to the date of this hearing. Therefore, pursuant to section 26(1) of the Act set out below, the landlord is entitled to the tenant's outstanding rent of \$6300.00 ($\$2100 \times 3 = 6300$) for the months of June, July and August 2016.

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

As the landlord has demonstrated their loss and the responsibility of the tenant for utilities, I find that the landlord is also entitled to \$2027.35 in outstanding utilities.

As the tenancy will continue, the landlord shall continue to hold the \$1050.00 security deposit and \$250.00 pet damage deposit until the end of the tenancy. At the end of this tenancy, the tenant's deposits shall be addressed in accordance with section 38 of the Act and any other applicable legislation.

As the landlord was successful in the application for dispute resolution, I find that the landlord is entitled to recover the \$100.00 filing fee for this application.

The landlord is entitled to a monetary order as follows,

Items	Amount
Rent - <i>June, July and August 2016: \$2100.00 x 3</i>	\$6300.00
Water: January 16 – June 16 billing date <i>3 bills @ 65% of totals = 69.62 + 82.06 + 70.87</i>	222.55
Gas: January 16 – June 16 billing date <i>6 bills @ 65% = 41.73 + 37.49 + 46.52 + 43.83 + 32.79 + 34.32</i>	236.68
Electricity: March 16 – June 16 billing date <i>693.10 + 529.60 + 345.42</i>	1568.12
Cost of Filing fee	100.00
Monetary Order to Landlord	\$8427.35

Conclusion

I dismiss the tenant's application without leave to reapply.

The landlord withdrew his application for an Order of Possession.

I grant the landlord a monetary order in the amount of \$8427.35.

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. 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: August 15, 2016

Residential Tenancy Branch