



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* ("Act") for:

- an Order of Possession for unpaid rent and utilities, pursuant to section 55; and
- a monetary order for unpaid rent and utilities, pursuant to section 67.

The landlord and his lawyer, EA (collectively "landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that his lawyer had authority to make submissions on his behalf at this hearing. This hearing lasted approximately 44 minutes in order to allow both parties to fully present their submissions.

The landlord testified that another tenant personally served this tenant with the landlord's application for dispute resolution hearing package ("Application") on July 20, 2016. The landlord confirmed that he witnessed this service. The tenant confirmed receipt of the Application on July 20, 2016. In accordance with section 89 of the *Act*, I find that the tenant was duly served with the landlord's Application on July 20, 2016.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's Application to increase the landlord's monetary claim to increase it from \$1,175.00 to \$2175.10 to include August 2016 rent. The tenant is aware that rent is due on the first day of each month. Therefore, the tenant knew or should have known that by failing to pay his rent, the landlord would pursue all unpaid rent at this hearing. The tenant testified that he did not pay rent to the landlord for August 2016. For the above reasons, I find that the tenant had appropriate notice of the landlord's claim for increased rent.

Preliminary Issue – 10 Day Notice and Order of Possession

The landlord initially testified that another tenant personally served the tenant with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated July 12, 2016 ("10 Day Notice"), on July 20, 2016 and that he witnessed this service. When I

questioned the landlord as to how the notice was served on the day after he filed his Application on July 19, 2016, the landlord insisted that the notice was served on July 20, 2016. After repeated questioning of the landlord, the landlord then notified his lawyer that he personally served the notice on July 12, 2016 without a witness. The landlord said that it was his Application that was served on July 20, 2016. The tenant testified that he did not receive the 10 Day Notice.

I find that the tenant was not served with the landlord's 10 Day Notice. The tenant denied receipt of the notice. It is the landlord's obligation to prove that he served the notice to the tenant, in accordance with section 88 of the *Act*. The landlord did not provide witness evidence to support his testimony that the notice was served in person on July 12. I find that the landlord only advised me that the notice was served on July 12, when I questioned why he filed his application on July 19 before serving the notice on July 20, as he first advised me. I find that the landlord provided conflicting testimony throughout this hearing.

Accordingly, I dismiss the landlord's application for an order of possession based on the 10 Day Notice, dated July 12, 2016, without leave to reapply. The 10 Day Notice is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

Issue to be Decided

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

Background and Evidence

The landlord testified that this month-to-month tenancy began on April 18, 2016, while the tenant stated that he moved in on May 1, 2016. Both parties agreed that monthly rent in the amount of \$950.00 is payable on the first day of each month. Both parties agreed that a security deposit of \$475.00 was paid by the tenant and the landlord continues to retain this deposit. The tenant confirmed that he continues to reside in the rental unit. The landlord did not provide a copy of the written tenancy agreement for this hearing. The tenant said that he never received a copy of the written tenancy agreement from the landlord.

The landlord seeks a monetary order of \$2,175.10 total. The landlord seeks \$1,900.00 total for unpaid rent from July to August 2016. Both parties agreed that the tenant did not pay rent of \$950.00 for each of July and August 2016. The tenant said that he

cancelled his rent cheques because there was no power in the rental unit for three days and the landlord failed to compensate him for this loss of power.

The landlord seeks \$50.00 for late payment and NSF fees for July 2016. The landlord said that the tenant cancelled his cheque for July 2016 and the bank refused to cash the cheque because the tenant did not have sufficient funds. The landlord said that the tenant agreed to pay this charge in paragraph 3 of the tenancy agreement. The tenant disputes this charge and said that his cheques were cancelled, not returned for insufficient funds.

The landlord seeks \$225.10 for unpaid utilities for July 2016. The landlord said that the tenant agreed to pay this charge in the tenancy agreement. The landlord confirmed that he had the utility bill in front of him during the hearing but he did not submit it for this proceeding. The landlord maintained that no copy of the utility bill was provided to the tenant, nor was a 30-day demand given to the tenant in writing. The landlord clarified that the only notice given to the tenant was by way of the 10 Day Notice and the tenancy agreement. The tenant disputes the utilities, saying that he did not sign this provision in the tenancy agreement and he did not receive a copy of the agreement from the landlord.

Analysis

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

Both parties agreed that the tenant failed to pay rent of \$950.00 for each month from July to August 2016. Therefore, I find that the landlord is entitled to \$1,900.00 in rental arrears for the above period.

I dismiss the landlord's claim for \$225.10 for unpaid utilities, without leave to reapply. As noted above, I find that the tenant did not receive a copy of the 10 Day Notice with the utilities amount indicated on it for July 2016. As per section 46(6) of the *Act*, I note that the landlord can only treat unpaid utilities as unpaid rent on a 10 Day Notice after at least a 30-day written demand is provided to the tenant, which was not done. I also find that the landlord failed to provide a copy of the utility bill to the tenant or for this hearing, despite the fact that he had it in front of him during the hearing. The landlord also failed to provide a copy of the written tenancy agreement to the tenant or for this hearing,

which supposedly indicated the utilities amount that the tenant agreed to pay. I find that the landlord had more than enough time to prepare for this hearing and submit the appropriate documentation required to support his claim.

I dismiss the landlord's claim for \$50.00 for a July 2016 NSF and late fee, without leave to reapply. I find that the landlord provided conflicting evidence about this charge, initially indicating it was for an NSF fee and then stating it was for a late fee. As noted above, I find that the landlord failed to provide a copy of the written tenancy agreement indicating that the tenant agreed to any late charges or NSF fees. I also find that the landlord did not incur any NSF fees because the tenant cancelled the cheque and it was not cashed by the landlord and returned for insufficient funds. The landlord did not provide any proof from his bank that he incurred any NSF fees. As noted above, I find that the landlord had more than enough time to prepare for this hearing and submit the appropriate documentation required to support his claim.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,900.00 against the tenant. 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.

The landlord's application for unpaid utilities of \$225.10 for July 2016 and \$50.00 for NSF and late fees for July 2016, is dismissed without leave to reapply.

The landlord's application for an order of possession based on the 10 Day Notice, dated July 12, 2016, is dismissed without leave to reapply. The 10 Day Notice is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

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 11, 2016

Residential Tenancy Branch