



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order of Possession for unpaid rent or utilities and for a Monetary Order for unpaid rent or utilities.

Service of the hearing documents, by the landlords to the tenant, was done in accordance with section 89 of the *Act*; served by registered mail on September 08, 2016. The landlords later amended their application and posted the amended application and other documents to the tenant's door on September 20, 2016. Canada Post tracking numbers were provided by the landlords in documentary evidence. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlords appeared, gave sworn testimony, were provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession?
- Is the landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

The landlords testified that this fixed term tenancy started originally in March, 2016 a new tenancy agreement was entered into on September 01, 2016. Rent for this unit is \$1,000.00 per month due on the 1st of each month plus utilities which have remained in the landlord's name.

The landlords testified that the tenant failed to pay the rent on September 01, 2016 leaving an unpaid balance of \$1,000.00. The landlords issued a 10 Day Notice to End Tenancy for unpaid rent (the Notice) on September 02, 2016. This was served in person to the tenant on that date. The tenant had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on September 12, 2016. The tenant did not pay the outstanding rent or file an application to dispute the Notice. The landlords therefore seek an Order of Possession effective as soon as possible.

The landlords testified that on September 14, 2016 the tenant caused a fire in the kitchen of the unit when she left a pot on the stove and then left it unattended. When she came back into the kitchen the kitchen was engulfed. This has rendered the unit unlivable. The tenant has moved somewhere else but still has some possessions in the unit and the landlords therefore seek vacant possession of the rental unit.

The landlords testified that as the tenant still has possession of the rental unit even though the tenancy is, in their eyes, frustrated, the landlords seek to amend their application to recover a loss of rent for October, 2016. The total amount of unpaid rent is now \$2,000.00.

The landlords testified that the tenant was made aware through emails that utilities were due and the tenant was sent a copy of the city utility bills due. The landlords therefore seek to recover the unpaid utilities of \$400.00.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of the landlords. I refer the parties to s. 26 of the *Act* which states:

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.

I am satisfied from the evidence before me that there is outstanding rent for September, 2016 of **\$1,000.00**. The landlords are therefore entitled to recover this amount from the tenant.

The landlords testified that the tenancy has become frustrated due to the fire caused by the tenant. I refer the parties to the Residential Tenancy Policy Guidelines #34 which provided guidance on the matter of frustrated contracts and states, in part, that a contract is frustrated where, without the fault of either party, a contract becomes incapable of being performed because an unforeseeable event has so radically changed the circumstances that fulfillment of the contract as originally intended is now impossible. Where a contract is frustrated, the parties to the contract are discharged or relieved from fulfilling their obligations under the contract; however, this guideline goes on to mention that a party cannot argue that a contract has been frustrated if the frustration is the result of their own deliberate or negligent act or omission. As the tenant's negligent act caused the fire in the unit then the contract has not been frustrated and the tenant is responsible to pay rent for October, 2016. I have therefore allowed the landlords to amend their application to include a loss of rent for October, 2016 of \$1,000.00. Consequently, it is my decision that the landlords are entitled to recover these amounts to a total of **\$2,000.00** and will receive a Monetary Order pursuant to s. 67 of the *Act*.

With regard to the landlords' claim to recover unpaid utilities of \$400.00; the landlord testified that the tenant was made aware through emails that utilities were due and the

tenant was sent a copy of the city utility bills. I have considered the evidence before me and find the landlords have insufficient evidence to show that utilities are due, the amount of the utilities outstanding or that the tenant was sent copies of the utility bills and a written demand for payment within 30 days. The landlords have not included copies of the utility bills in documentary evidence and the 10 Day Notice does not show that there are outstanding utilities. Without further evidence to meet the burden of proof in this matter, I dismiss this section of the landlords claim with leave to reapply.

The landlords will receive a Monetary Order pursuant to s. 67 of the *Act* for the balance owing as follows:

Outstanding rent	\$1,000.00
Loss of rental income for October	\$1,000.00
Total amount due to the landlords	\$2,000.00

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent and utilities, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. As this Notice was served in person it was served on September 02, 2016. The tenant did not pay all the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, I find that the tenant is conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice. As this date has since passed I grant the landlord an Order of Possession effective two days after service pursuant to s. 55 of the *Act*.

Conclusion

I HEREBY FIND in partial favor of the landlord's amended monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$2,000.00** pursuant to s. 67 and of the *Act*. The Order must be served on the tenant; if the tenant fails to comply with the Order, The Order is enforceable through the Provincial (Small Claims) Court as an Order of that Court.

I HEREBY ISSUE an Order of Possession in favor of the landlord effective **two days** after service upon the tenant. This Order must be served on the tenant; if the tenant fails to comply with the Order, the Order may be filed in the Supreme 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: November 01, 2016

Residential Tenancy Branch