



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF; MT, CNR, RR

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 pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

This hearing also addressed the tenant's cross application for:

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to section 66;
- cancellation of the landlord's 10 Day Notice pursuant to section 46; and
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;

The landlord attended the hearing and the tenant called in to the conference call hearing 10 minutes after the scheduled hearing start time. Both parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant confirmed personal receipt of the landlord's application for dispute resolution package. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the application.

Preliminary Matter – Service of Tenant's Application

The tenant testified that he personally served the landlord's agent the tenant's application for dispute resolution hearing package. The tenant could not provide the date he served the landlord's agent these documents. The landlord denied receipt of any such documents. In the absence of evidence or testimony confirming service of the hearing package, I dismiss the tenant's application.

Preliminary Issue – Amendment of Landlords' Application

The landlord confirmed that he wished to amend the landlord's application to increase his monetary claim to include October and November unpaid rent of \$450.00. I find that the tenant should reasonably have known that the landlord would suffer this loss of income if he did not pay the rent or vacate the rental unit to permit the landlord to re-rent the unit. Based on this undisputed evidence and in accordance with section 64(3)(c) of the *Act*, I amend the landlord's application to include a monetary claim for October and November unpaid rent in the total amount of \$900.00.

Issue(s) to be Decided

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

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

Is the landlord authorized to recover the filing fee for this application from the tenant?

Background and Evidence

As per the testimony of the parties, the tenancy began on July 1, 2014 on a month-to-month basis. Rent in the amount of \$450.00 is payable on the first of each month. The tenant remitted a security deposit in the amount of \$225.00 at the start of the tenancy. The tenant continues to reside in the rental unit.

The landlord testified that a 10 Day Notice for unpaid rent of \$450.00 due on September 1, 2016 was personally to the tenant on September 1, 2016. The tenant confirmed receipt of this 10 Day Notice but could not recall when this was received. In the tenant's application the tenant indicated he received the 10 Day Notice on August 2, 2016.

The landlord seeks a monetary order of \$1,350.00 for unpaid rent from September 2016 to August 2017. The landlord seeks unpaid utilities in the amount of \$78.71 and the recovery of the filing fee in the amount of \$100.00. The landlord has submitted a copy of the utility bill.

The tenant confirmed he has not paid September, October and November rent or the utility bill.

Analysis

Section 52 of the *Act* establishes that in order to be effective, a notice to end tenancy must be in writing and must be signed and dated by the landlord giving the notice. Based on the notice before me, which remains unsigned and undated by the landlord, I find the tenant was not served with an effective notice. Due to the ineffective notice, I find the landlord is not entitled to an order of possession and the tenancy continues until it is ended in accordance with the *Act*.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which is the first day of each month. 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.

I find that the landlord proved that the current rent for this unit is \$450.00. I find the landlord provided undisputed evidence that the tenant failed to pay rent from September 2016 to November 2016. Therefore, I find that the landlord is entitled to \$1,350.00 in rent.

The parties agreed the tenant was responsible for utilities and the parties further agreed the tenant did not pay the utilities in the amount of \$78.71. For this reason I find the landlord is entitled to \$78.71 in utilities.

As the landlord was partially successful in this application, I find that the landlord is entitled to recover \$50.00 of the \$100.00 filing fee paid for the application, for a total award of \$1,528.71.

Conclusion

I dismiss the landlord's application for an order of possession in relation to the unsigned and undated 10 Day Notice, without leave to reapply.

I issue a monetary order in the landlord's favour in the amount of \$1,528.71 against the tenant.

The tenant's entire application is dismissed with leave to reapply.

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 07, 2016

Residential Tenancy Branch