



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

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 and utilities pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not participate in the conference call hearing, which lasted approximately 10 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that on March 29, 2017 he forwarded the landlord's application for dispute resolution hearing package via registered mail to the tenant. The landlord provided a Canada Post receipt and tracking number as proof of service. Based on the testimony of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenant has been deemed served with the hearing package on April 3, 2017, the fifth day after its registered mailing.

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 and utilities?

Is the landlord authorized to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested?

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

Background and Evidence

As per the testimony of the landlord, the tenancy began on December 1, 2016 on a month-to-month basis. Rent in the amount of \$1,000.00 is payable on the first of each month. The tenant remitted a security deposit in the amount of \$500.00 at the start of the tenancy, which the landlord still retains.

A 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") of \$3,000.00 and Utilities of \$725.00 due on March 1, 2017 was issued to the tenant on March 17, 2017 by way of posting to the rental unit door where the tenant resides. The notice indicates an effective move-out-date of March 27, 2017. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 10 Day Notice on March 20, 2017, three days after its posting.

The landlord seeks a monetary order in the total amount of \$4,700.00. The landlord seeks \$4,000.00 for unpaid rent from January 2017 to April 2017. The landlord claimed that the tenant has not paid any rent for the above four months. The landlord seeks \$600.00 in unpaid utilities. The landlord claimed that the parties have a verbal agreement in which the tenant is responsible for 25% of the utilities. The landlord did not provide copies of utilities bills. The landlord is also seeking to recover the \$100.00 filing fee for this application from the tenant.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for unpaid rent or utilities the tenant may, within five days, pay the overdue rent or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant does not pay the overdue rent or file an application, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice and must move out of the rental unit.

Based on the landlord's testimony and the notice before me, I find that the tenant was served with an effective notice. As the tenant did not pay the overdue rent or file an application to dispute the notice, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, and must move out of the unit. As this has not occurred, I find that the landlord is entitled to a two (2) day order of possession, pursuant to section 55 of 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 \$1,000.00. I find the landlord provided undisputed evidence that the tenant failed to pay full rent from January 2017 to April 2017. Therefore, I find that the landlord is entitled to \$4,000.00 in rent. I find the landlord has provided insufficient evidence to establish the amount of outstanding utilities and for this reason; I dismiss this portion of the landlord's claim. As the landlord was partially successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for the application, for a total award of \$4,100.00.

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security deposit in the total amount of \$500.00 in partial satisfaction of the monetary award and I grant an order for the balance due \$3,600.00.

Conclusion

I grant an order of possession to the landlord effective **two (2) days after service on the tenant**.

I dismiss the landlord's application for a monetary order for utilities without leave to reapply.

I issue a monetary order in the landlord's favour in the amount of \$3,600.00 against the tenant.

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: May 01, 2017

Residential Tenancy Branch