



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNR, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent and utilities - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to unpaid rent and utilities?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The following are undisputed facts: There is no written tenancy agreement. The tenancy started in August 2016. Rent of \$420.00 is payable on the first day of each month. The Tenant pays hydro to the Landlord every 6 months based on meter readings. The Landlord has no meter readings available for the period leading up to May 1, 2017. The Tenant has a copy of a receipt with a meter reading for December 2017 and has paid the utilities to this date. The Tenant has not paid the rent for the

months of July and August 2017. On June 1, 2007 the Landlord served the Tenant with a one month notice to end tenancy for cause (the "Notice"). The Notice includes another page detailing the reasons for the Notice and includes submissions on interference and confrontations with the management of the Landlord, an incident on May 30, 2017, and non-compliance with marina regulations.

The Tenant states that on June 6, 2007 the Landlord rescinded the Notice and agreed to provide the Tenant with free rent for June 2017. The Tenant recorded the conversation and provides a transcript of the conversation. The Landlord states that he only agreed to rescind the Notice if the Tenant provided proof of insurance and that the Tenant did not provide this proof. The Tenant states that she informed the Landlord during the conversation that she carried insurance and did not provide any further proof as the Landlord no longer requested such proof. The Landlord agrees that no rent was payable for June 2017.

The Parties entered into negotiations in relation to remaining matters of the rents, utilities and filing fee and reached a mutual agreement to settle these claims. The Landlord provided the address where rent is payable and confirmed that the rent is payable to the company named in this application. The Landlord will provide a receipt for any cash payments for rent but prefers cheques.

The Parties mutually agree as follows:

- 1) The Tenant will, no later than 5:00 p.m. on August 17, 2017, pay the Landlord the sum of \$840.00 representing rent payable for July and August 2017; and**
- 2) The Tenant will provide to the Landlord a copy of the Tenant's receipt containing the hydro meter reading taken in December 2016 (the "December reading");**

- 3) The Landlord will calculate the hydro payable for the period January 1 to June 30, 2017 based on the December reading and those taken on June 30, 2017;**
- 4) The Landlord will present the Tenant with a hydro bill that contains the amount payable for the period January 1 to June 30, 2017 based on and stating the meter readings;**
- 5) The Tenant will pay the hydro bill within 30 days receipt of that bill;**
- 6) The Tenant will pay the Landlord \$50.00 representing half of the filing fee paid for this application; and**
- 7) These terms comprise the full and final settlement of all aspects of this dispute for both Parties.**

The Parties confirmed at the end of the hearing that this agreement was made on a voluntary basis and that the Parties understood the nature of this full and final settlement of this matter.

Analysis

Section 55 of the Act provides that a landlord may request an order of possession where, inter alia, a notice to end tenancy has been given to the tenant. Although the Landlord gave the Tenant the Notice, given the transcript evidence and the Landlord's evidence that no rent was payable for June 2017 I find on a balance of probabilities that the Landlord rescinded the Notice after it was given. As such, I consider that there is no longer any notice to end tenancy upon which the Landlord may rely to obtain an order of possession. I therefore dismiss the claim for the order of possession.

Section 63 of the Act provides that if the parties settle their dispute during dispute resolution proceedings, the settlement may be recorded in the form of a decision or order. Given the mutual agreement reached during the Hearing, I find that the Parties have settled the remaining matters in dispute as recorded above. In order to give effect

to the agreement on the rent and the filing fee I provide the Landlord with a monetary order for this amount of **\$890.00**.

Conclusion

The Notice was rescinded and the tenancy continues.

The Parties have resolved the remaining matters by mutual agreement.

I grant the Landlord an order under Section 67 of the Act for **\$890.00**. If necessary, this order may be filed in the Small Claims 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 14, 2017

Residential Tenancy Branch