



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HFBC HOUSING FOUNDATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR,

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; and
- a monetary order for unpaid rent pursuant to section 67.
- evidence in a different way than required by the *Act* pursuant to section 71;

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

At the hearing, the tenant testified that the landlord's original style of cause was in error as his first and second name had been reversed. The landlord amended the tenant's name, which appears correctly above. The tenant's name is amended accordingly.

At the hearing, the landlord requested an amendment of the monetary award sought from \$776.00 to \$1,174.00, the current amount the landlord maintained was owing. As the tenant realized that an additional month's rent had become owing since the landlord commenced this application, the tenant had no objection to the landlord's request for an amended monetary award. I amended the landlord's application to reflect this additional requested monetary award.

The landlord gave sworn testimony supported by written evidence that she sent the tenant a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) by registered mail on July 6, 2017. She supplied written evidence in the form of a Canada Post Tracking Receipt to confirm this registered mailing. The tenant testified that he never checks his mailbox and that he never received the landlord's 10 Day Notice. He said that he did learn that registered mail had been sent to him after he picked up the landlord's dispute resolution hearing and written evidence package sent to him by registered mail by the landlord. 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 July 11, 2017, the fifth day after its registered mailing.

Although the landlord was uncertain as to when the landlord's dispute resolution hearing and written evidence packages were sent to the tenant, she testified that these documents were sent to the tenant by registered mail. The tenant confirmed that he did receive these documents from the landlord by registered mail well in advance of this hearing. He testified that Canada Post left a copy of the delivery notice on his door, which alerted him that the documents were available to him at the local post office. I am satisfied that the tenant was duly served with the landlord's dispute resolution hearing and written evidence packages in accordance with section 89 of the *Act*.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord entitled to a monetary award for unpaid rent?

Background and Evidence

This tenancy began as a one-year fixed term tenancy on August 1, 2015. The tenant had supplied income information to entitle him to a subsidized monthly rent of \$600.00, plus \$25.00 for cable television, and \$40.00 for internet.

When the tenant failed to supply requested income information to the landlord, the landlord advised the tenant that his monthly rent was reverting to the non-subsidized rate of \$998.00 for this rental unit, plus the above cable television and internet fees for a total of \$1,063.00 per month as of June 1, 2017.

The landlord's amended application for a monetary award included the additional \$398.00 for each of June, July and August 2017. At the hearing, the tenant did not dispute the landlord's assertion that he had failed to provide income information to the landlord and had not paid the requested increased rent for any of the months cited above.

Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to a final and binding resolution of the issues under dispute under the following terms:

1. The tenant agreed to pay the landlord a total of \$1,900.00 on September 1, 2017, which was to include \$1,063.00 for rent, cable and internet for September 2017, and \$837.00 to be applied to the outstanding amount owed to the landlord.
2. The tenant agreed to pay the remaining amount currently owed to the landlord on September 15, 2017. Although this amount was misidentified as \$237.00 at the hearing, **this amount is correctly calculated at \$337.00**. As it was the tenant's clear intent to pay all of the outstanding rent owing for this tenancy on September 15, 2017, I am satisfied that the tenant intended to pay \$337.00 to the tenant as of that date to satisfy all outstanding portions of his rental arrears by that time.
3. The tenant agreed to provide the requested proof of his current income to the landlord within two weeks of receiving the landlord's income package.
4. The landlord agreed to withdraw the existing 10 Day Notice issued to the tenant on July 6, 2017.
5. Both parties agreed that they entered into this settlement free of coercion and that the settlement agreement as outlined above constituted a final and binding resolution of all issues currently under dispute regarding this tenancy.

Conclusion

To give effect to the settlement reached between the parties and as discussed at the hearing, I issue the attached monetary award in the landlord's favour to be used by the landlord only in the event that the tenant does not comply with the monetary terms of the settlement agreement outlined in clause 1 and 2 above. The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible after a failure to comply with the terms of the above settlement agreement. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

To add further clarity to this matter, I order that the correct monthly rent for September 2017, including cable and internet access is set at \$1,063.00. This monthly rent is to remain in effect until such time as the tenant produces the requested income information to the landlord and the landlord has had an opportunity to assess the extent to which the tenant's current income enables him to obtain a subsidized rental for this rental unit. This monthly rent remains in effect until revised in accordance with the terms of the tenancy agreement governing this tenancy and the *Act* or in accordance with a written agreement between the parties.

I also order the tenant to supply the requested income information to the landlord in accordance with his commitment to do so as outlined in clause 3 of this settlement agreement.

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 29, 2017

Residential Tenancy Branch