



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

On July 18, 2017, the Landlord submitted an Application for Dispute Resolution for an order of possession; for a monetary order for unpaid rent or utilities; to keep the security deposit; and to recover the cost of the filing fee. The matter was set for a conference call hearing.

The Landlord attended the teleconference hearing; however, the Tenants did not. The Landlord provided affirmed testimony that he personally served the Tenant, Ms. M.P. the Notice of Hearing on July 23, 2017, at the rental unit. Based on the Landlord's affirmed testimony, I find that the Tenant was served with the Notice of Hearing.

The Landlord was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions at the hearing.

Issues to be Decided

- Is the Landlord entitled to an order of possession due to unpaid rent?
- Is the Landlord entitled to a monetary order to recover unpaid rent and utilities?
- Is the Landlord entitled to keep the security deposit towards unpaid rent?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The Landlord testified that the tenancy was renewed on May 1, 2017, as a one year fixed term tenancy. Rent in the amount of \$1,250.00 is to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$600.00. The Landlord provided a copy of the tenancy agreement.

The Landlord testified that the previous tenancy agreement required the Tenant to pay \$1,200.00 per month. The Landlord testified that he receives the rent payments from the Government's income assistance office.

The Landlord testified that the Tenant did not pay all the rent owing under the tenancy agreement for the month of June 2017. The Landlord testified that he only received \$1,200.00.

The Landlord testified that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 5, 2017, ("the Notice"). The Landlord testified that he served

the 10 Day Notice to the Tenant in person on June 5, 2017. The Landlord provided a copy of the 10 Day Notice.

The Notice states that the Tenant has failed to pay rent in the amount of \$50.00 which was due on May 1, 2017. The Notice also indicates that the Tenant owes \$575.00 for utilities after written demand made on May 15, 2017. The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice.

The Landlord testified that the Tenant did not pay the outstanding amount of rent within 5 days of receiving the 10 Day Notice.

There is no evidence before me that that the Tenant made an application to dispute the Notice.

The Landlord testified that the Tenant still owes rent money for the following months:

- June 2017, in the amount of \$50.00
- July 2017, in the amount of \$50.00
- August 2017, in the amount of \$50.00
- September 2017 in the amount of \$50.00

The Landlord testified that the Tenant is responsible to pay a 2/5 share of the utility costs. The Landlord did not provide any utility invoices in support of his claim. The Tenancy agreement provided by the Landlord does not contain a term that the Tenant is responsible to pay utilities.

The Landlord seeks an order of possession and a monetary order for unpaid rent in the amount of \$20.00.

The Landlord testified that the Tenant owes \$960.00 for utility costs.

The Landlord is seeking to keep the security deposit in partial satisfaction of the claim for unpaid rent and utilities.

Analysis

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I find that the Tenant did not pay the outstanding rent owing under the tenancy agreement within five days of receiving the 10 Day Notice, and did not apply to dispute the Notice, and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective two days after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

I find that the Tenant owes the Landlord \$200.00 for unpaid rent.

I dismiss the Landlord's monetary claim for utilities with leave to reapply. I find that 10 Day Notice indicates the Tenant was given a written demand on May 15, 2017 for payment of the utilities. Section 46 of the Act states if utility charges are unpaid more than 30 days after a Tenant is given a written demand for payment, the Landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

I find that the Landlord issued the 10 Day Notice prior to the expiry of 30 days. I also find that the tenancy agreement does not contain a term regarding payment of utilities. In addition, the Landlord did not provide any documentary evidence of utility bills to support his claim.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I find that the Landlord has established a total monetary claim of \$300.00 comprised of \$200.00 in unpaid rent for the above mentioned dates and the \$100.00 fee paid by the Landlord for this hearing.

I authorize the Landlord to keep \$300.00 of the security deposit in satisfaction of the award for unpaid rent and the filing fee.

Conclusion

The Tenant failed to pay the rent due under the tenancy agreement and did not file to dispute the 10 Day Notice. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice.

I order that the Landlord can keep the \$300.00 from the security deposit in satisfaction of the claim.

The Landlord is granted an order of possession effective 2 days after service on the Tenants.

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: September 22, 2017

Residential Tenancy Branch