



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, CNR, MNDC, ERP, RP, FF

Introduction

This hearing dealt with applications from both the landlords and the tenant under the *Residential Tenancy Act* (the *Act*). The landlords applied for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67.

The tenant applied for:

- cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to the landlords to make emergency repairs to the rental unit pursuant to section 33;
- an order to the landlords to make repairs to the rental unit pursuant to section 32;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

The landlords attended the hearing via conference call and provided undisputed affirmed testimony. The tenant did not attend or submit any documentary evidence. The landlords stated that the tenant was served with the notice of hearing package in person on September 11, 2017. The landlords also confirmed that they were served with the tenant's notice of hearing package and was aware of the tenant's issues within her application for dispute.

Rule 7 of the Rules of Procedure provides that:

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

7.2 Delay in the start of a hearing

In the event of a delay of a start of a conference call hearing, each party must stay available on the line to commence the hearing for 30 minutes after the time scheduled for the start of the hearing.

In the event of a delay of a face-to-face hearing, unless otherwise advised, the parties must remain available to commence the hearing at the hearing location for 30 minutes after the time scheduled for the start of the hearing.

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent.

If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

A 35 minutes past the start of the scheduled hearing time, in the absence of any evidence or submissions from the tenant and in the absence of the tenant's participation in this hearing, I order the tenant's application dismissed without leave to reapply. I make no findings on the merits of the matter.

Preliminary issue(s)

At the outset, the landlords claimed that the tenant had vacated the rental unit on October 31, 2017 and as a result no longer require an order of possession.

It was clarified with the landlords that the monetary claim of \$3,600.00 also provides for an additional monetary claim of \$154.45 for unpaid Utilities within the body of the application for dispute. As such, the landlords' monetary claim is amended to \$3,754.45.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for unpaid rent?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began on July 1, 2016 on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated July 1, 2016. The monthly rent is \$1,700.00 payable on the 30th day of each month. A security deposit of \$850.00 was paid on July 1, 2016.

The landlords seek a monetary order for unpaid rent and utilities of \$3,754.45 which consists of:

\$700.00	Unpaid Rent, June 2017
\$1,200.00	Unpaid Rent, July 2017
\$1,700.00	Unpaid Rent, August 2017
\$154.45	Unpaid Utilities

The landlords stated that the tenant was served with a 10 Day Notice dated August 16, 2017 by posting it to the rental unit door on August 16, 2017. It states that the tenant failed to pay rent of \$3,600.00 that was due on August 1, 2017 and \$154.45 in utilities following a written demand on August 23, 2017. The 10 Day Notice also displays an effective end of tenancy date of August 15, 2017. The landlords clarified

that no such written demand was given to the tenant as the landlord has referred to the August 23, 2017 date as the date of a utility invoice.

The landlord also claims that as of August 16, 2017 the tenant has failed to pay any rent up to and including October 31, 2017 when the landlord discovered that the tenant had vacated the rental unit without any notice. As such, the landlord also seeks recovery of unpaid rent of \$1,700.00 for September 2017 and \$1,700.0 for October 2017.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, I accept the undisputed affirmed evidence of the landlords that the 10 Day Notice dated August 16, 2017 was served to the tenant by posting it to the rental unit door on August 16, 2017. As such, I also accept the landlords' undisputed evidence that the tenant vacated the rental premises on October 31, 2017 having failed to pay any rent subsequent to being served with the 10 Day Notice. I find that the landlord has established a monetary claim of unpaid rent for \$7,000.00 which consists of:

\$700.00	Unpaid Rent, June 2017
\$1,200.00	Unpaid Rent, July 2017
\$1,700.00	Unpaid Rent, August 2017
\$1,700.00	Unpaid Rent, September 2017
\$1,700.00	Unpaid Rent, October 2017

I find as the landlord has failed to serve the tenant with a written demand for the \$154.45 in unpaid utilities that this portion of the landlord's claim is pre-mature and is dismissed with leave to reapply. Leave to reapply is not an extension of any applicable limitation period.

Conclusion

The landlord is granted a monetary order for \$7,000.00.

This order must be served upon the tenant. Should the tenant fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial 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: November 17, 2017

