



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR
 FFL, OPUM, DR

Introduction and Preliminary Matter

This hearing convened as a result of cross applications. In the Tenant's Application for Dispute Resolution, filed October 10, 2017, the Tenant sought to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on October 5, 2017 (the "Notice"). In the Landlord's Application, he sought an Order of Possession and monetary compensation based on the Notice, authority to retain the Tenant's security deposit and recovery of the filing fee.

The hearing was set for teleconference on December 21, 2017. Only the Landlord and his spouse called into the hearing. I waited until 10 minutes past the start of the scheduled hearing time in order to enable both parties to connect with this teleconference hearing.

Rule 7 of the *Residential Tenancy Branch Rules of Procedure* provides in part 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.

7.3 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.

Accordingly, in the absence of any evidence or submissions from the Tenant in support of his claim, his Application is **dismissed without leave to reapply**.

The Landlord gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?
2. Should the Landlord be authorized to retain the Tenants' deposits?
3. Should the Landlord recover the filing fee?

Background and Evidence

The Landlord testified as to the terms of the tenancy. He stated that monthly rent was payable in the amount of \$850.00. The Tenant is also responsible for paying 35% of the utilities. The Landlord collected a security deposit in the amount of \$400.00 and a pet damage deposit in the amount of \$200.00 such that the Landlord holds a total of \$600.00 in deposits.

The Tenant failed to pay rent for the month of October 2017. The Landlord issued a 10 day Notice to End Tenancy for non-payment of rent on October 5, 2017 indicating the amount of \$850.00 was due as of October 1, 2017 (the "Notice").

Based on the *Proof of Service Notice to End Tenancy* filed in evidence I find that the Tenant was served with the Notice on October 5, 2017 by posting to the door. Section 90 of the Act provides that documents served in this manner are deemed served three days later. Accordingly, I find pursuant to section 88 of the *Residential Tenancy Act*, that the Tenant was served with the Notice as of October 8, 2017.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service, namely, October 13, 2017. The Notice also explains the Tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

The Landlord testified that at the time of the hearing the Tenant failed to pay rent for November and December 2017 and failed to pay utilities. In the within hearing the Landlord confirmed that he sought compensation for the following:

| | |
|----------------------|----------|
| November rent | \$850.00 |
| December rent | \$850.00 |
| October gas utility | \$19.61 |
| November gas utility | \$41.00 |

| | |
|---|------------|
| December gas utility (estimated) | \$79.00 |
| October/November electrical utility | \$100.00 |
| December/January electrical utility (estimated) | \$100.00 |
| TOTAL | \$2,039.61 |
| less security and pet damage deposit | \$600.00 |
| TOTAL MONETARY ORDER REQUESTED | \$1,439.61 |

The Landlord also sought recovery of the filing fee for a total of \$1,539.61.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Having failed to attend the hearing, the Tenant's application to cancel the Notice is dismissed. I therefore grant the Landlord's request for an Order of Possession. As the effective date of the Notice has passed, the Order of Possession will be effective two (2) days after service. This order may be filed in the Supreme Court and enforced as an order of that Court.

I accept the Landlord's testimony that the Tenant failed to pay rent for November and December 2017. Section 26 of the *Act* provides that a Tenant must pay rent. I therefore award the Landlord compensation for November and December.

I accept the Landlord's undisputed testimony that a term of the oral tenancy agreement was that the Tenant was to pay 35% of the gas and electrical utility. Documentary evidence supplied by the Landlord confirms that the Landlord provided the accounts to the Tenant as well as making a written demand for payment. I therefore find the Landlord is entitled to compensation for the October and November accounts.

The Landlord sought compensation for estimated costs of the gas utility account for December and the electrical utility for December and January. As those costs are unknown, and the tenancy is ending pursuant to this my Decision, I decline the Landlord's request for related compensation at this time. The Landlord shall be at liberty to seek a further monetary order once those amounts are known and the tenancy has ended.

As the Landlord has been substantially successful, I award him recovery of the \$100.00 filing fee.

Conclusion

The Tenant failed to call into the hearing and his application to cancel the Notice is dismissed.

The Landlord is granted an Order of Possession effective two (2) days after service.

The Landlord is awarded compensation in the amount of \$1,960.61 for the following:

| | |
|-------------------------------------|-------------------|
| November rent | \$850.00 |
| December rent | \$850.00 |
| October gas utility | \$19.61 |
| November gas utility | \$41.00 |
| October/November electrical utility | \$100.00 |
| filing fee | \$100.00 |
| TOTAL | \$1,960.61 |

While the amount awarded is more than the amount requested by the Landlord on the Application for Dispute Resolution, I find the Tenant knew, or ought to know that the amounts requested by the Landlord for unpaid rent and utilities would increase if the tenancy continued past the date the Application was made.

I Order, pursuant to sections 38, 67 and 72, that the Landlord retain the Tenant's security deposit of \$400.00 and the pet damage deposit of \$200.00 in partial satisfaction of the claim and I grant the Landlord a Monetary Order for the balance due of **\$1,360.61**. This Order may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: December 21, 2017

Residential Tenancy Branch