



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPR MNR MNSD FF

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 and utilities pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. No issues were raised with respect to the service of the application for dispute resolution, including the notice of hearing and evidence on file.

Issues

Is the landlord entitled to an order of possession pursuant to a 10 Day Notice to End Tenancy for unpaid rent and/or utilities (the 10 Day Notice)?

Is the landlord entitled to a monetary award for unpaid rent and/or utilities?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The tenancy began on July 1, 2016. Neither party submitted a copy of the tenancy agreement although a written tenancy agreement was entered into at the start of the tenancy. The tenant states she did not get a copy. The landlord states he cannot find his copy but gave a copy to the tenant.

The monthly rent at the start of the tenancy was \$700.00. The tenant argues this amount was inclusive of utilities. The tenant further states a month into the tenancy her son moved in with her for which she offered the landlord an extra \$50.00 per month towards utilities and the landlord accepted. The landlord argues that utilities were never included in the \$700.00 rent amount and the tenant is responsible for 40% of the utilities.

The landlord testified that in August 2017 the utilities got switched over from the upstairs tenant's name to his name. At this time, he warned the tenant that utilities were split 60/40 with the upstairs tenant. The upstairs tenant has been paying their portion but the tenant has not paid and is in arrears \$487.48 to date.

The tenant was served with the 10 Day Notice for unpaid utilities on November 16, 2017. The copy of the 10 Day Notice submitted by the landlord indicates that \$62.00 in utilities was outstanding and a written demand letter for this outstanding amount was served to the tenant on October 15, 2017. The tenant acknowledged service of the 10 Day Notice and written demand letter.

Analysis

Section 46(6) of the Act deals with a landlord's notice for non-payment of rent and utilities and stipulates as follows:

(6) If

(a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

I find the landlord is treating the unpaid utilities as unpaid rent and issued a 10 Day Notice based upon the unpaid utilities amount; however, I find the landlord has failed to

first meet the requirement to establish that the tenancy agreement requires the tenant to pay utility charges to the landlord.

The tenancy began in July 2016 and there was no evidence of the tenant paying 40% of the utilities from the beginning of the tenancy. The landlord's own testimony was that he did not begin to request this payment from the tenant until August 2017 after the utilities got switched to his name. The landlord also failed to present a tenancy agreement in support of his argument that utilities were never included in the \$700.00 rent amount at the start of the tenancy.

As the landlord was not permitted to treat the unpaid utilities as unpaid rent, the 10 Day Notice dated November 16, 2017 is hereby cancelled and the landlord's monetary claim for unpaid utilities is also dismissed without leave to reapply.

As the landlord was not successful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

The 10 Day Notice dated November 16, 2017 is hereby cancelled and of no force or effect.

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: February 08, 2018

Residential Tenancy Branch