



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FFL, CNR, OLC, ERP, FFT

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*).

The corporate landlord applied for:

- an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

The tenants named the personal landlord in their application seeking:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 33; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The personal landlord confirmed she represented both herself and the corporate landlord. The tenant confirmed she represented both named co-tenants.

At the outset of the hearing the parties said that the tenant had vacated the rental unit. The landlord withdrew the portions of their application seeking an order of possession. The tenants withdrew their application in its entirety.

As both parties were present service was confirmed. The tenant confirmed they were served with the landlord's application for dispute resolution, the amendment to the application and their evidence. The tenant said that they were uncertain if they were in receipt of the landlord's complete evidence package. I informed the parties that if there were specific items where service was disputed I would consider the parties' respective submissions on whether that piece of evidence would be accepted. The tenant did not raise issue with the documentary evidence referenced by the landlord through the hearing. Based on the undisputed testimonies I find that the tenant was served with the landlord's application, amendment and evidence in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing, the landlord made an application requesting to amend the monetary amount of the claim sought. The landlord indicated that since the application was filed they have recalculated the arrear and the current balance owing is \$1,914.35.. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure, as the amount of rental arrear changing over time is reasonably foreseeable, I amend the landlords' Application to increase the landlords' monetary claim from \$1,424.35 to \$1,914.35.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Background and Evidence

The parties agreed on the following facts. This fixed-term tenancy began in December, 2017 and was scheduled to end November, 2018. The monthly rent was \$980.00 payable on the first of each month. A security deposit of \$490.00 was collected at the start of the tenancy and is still held by the landlord.

While the tenancy agreement provides that water is included in the monthly rent, the addendum to the agreement sets forth that the tenant is responsible for paying the water, hydro, gas, cable, phone and internet.

The landlord testified that the tenant vacated the rental unit on June 15, 2018 without paying rent for May or June, 2018. The landlord said that the arrear for the tenancy is \$1,470.00.

The landlord testified that the tenant failed to pay any of the utility bills for the duration of the tenancy and the amount owing for utilities is \$444.35. The landlord submitted into documentary evidence copies of the utility bills and demand letters issued to the tenant.

The tenant disputes that they were served with the original utility bills showing the amounts owed during the tenancy. The tenant testified that they were never provided with a copy of the original tenancy agreement. The tenant referenced an incident where the rental unit was flooded in April, 2018 and the landlord refused to take appropriate action.

Analysis

Based on the testimony of the parties and the documentary evidence I accept that the rent for this tenancy was \$980.00 payable on the first of each month. I further accept the evidence that the tenant was responsible for paying a portion of the utilities for the rental building.

I do not find the tenant's submission that they were never served with the utility bills or that they were requested to be credible. The out of focus photographs of print out of correspondence which is purported to have been given to the landlord is of little credibility or value. I find the landlord's testimony to be more credible than that of the tenant. I accept the landlord's evidence that the tenant was provided with notification and demand for utility payments.

I find the tenant's submissions regarding flooding in the rental unit to be irrelevant to the matter at hand. In accordance with section 26(1) of the *Act*, the tenant must pay rent when it is due whether or not the landlord has complied with the *Act*, regulations or tenancy agreement.

I accept the landlord's evidence that the arrear for this tenancy is \$1,470.00 and that the utility arrears is \$444.35. Accordingly, I issue a monetary award in the landlord's favour in the amount of \$1,914.35.

As the landlord's application was successful the landlord is entitled to recover the \$100.00 filing fee for their application.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenants' \$490.00 security deposit in partial satisfaction of the monetary award issued in the landlord's favour.

Conclusion

I issue a monetary Order in the landlords' favour for \$1,524.35 under the following terms, which allows the landlord to recover the unpaid rent and utilities, plus the recovery of the filing fee

Item	Amount
Unpaid Rent May, 2018	\$980.00
Unpaid Rent June 1-15, 2018	\$490.00
Unpaid Utilities	\$444.35
Filing Fees	\$100.00
Less Security Deposit	-\$490.00
Total Monetary Order	\$1,524.35

The tenants must be served with this Order as soon as possible. Should the tenants 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: July 11, 2018

Residential Tenancy Branch