



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPU, MNRL, OL, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord filed under the Residential Tenancy Act (the “Act”), for an order of possession, a monetary order for unpaid rent and utilities, and the return of the filing fee

The Landlord attended the hearing and was affirmed to be truthful in his testimony. As the Tenants did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

Section 59(3) of the Act and the Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified the Application for Dispute Resolution, and Notice of Hearing was personally served on the Tenants at the rental unit. I find that the Tenants have been duly served in accordance with the Act.

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

I have reviewed all oral and written evidence before me that met the requirements of the 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

- Is the Landlord entitled to an order of possession for unpaid utilities?
- Is the landlord entitled to a monetary order for unpaid utilities?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The Landlord testified that tenancy began on July 1, 2010, as a month to month tenancy. Rent in the amount of \$925.00 is to be paid by the first day of each month and the Landlord is not holding a security deposit or pet damage deposit.

The Landlord testified that he served the 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") to the Tenants on April 23, 2018, in person. The Notice has an effective date of May 7, 2018, and an outstanding utility amount of \$1,718.24 as of April 19, 2018. The Landlord testified that he submitted an amendment to his original application, requesting that his monetary claim be increased to \$, 2957.72; stating that the current outstanding utilities are \$2,023.72 and that the Tenants have not paid the rent or \$925.00 for July 2018. The Landlord testified that the Tenants have not paid the outstanding amount indicated on the Notice or served the Landlord with an application to show they had disputed the Notice.

The Landlord is requesting an order of possession be granted and a monetary order for the outstanding rent and utilities. The Landlord provided a copy of the outstanding utility bill into documentary evidence.

Analysis

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

Section 46 of the *Act* requires that upon receipt of a Notice to End Tenancy for Non-payment of Rent a tenant must, within five days, either pay the amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do either of these things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice under section 46(5).

Landlord's notice: non-payment of rent

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(2) A notice under this section must comply with section 52 [*form and content of notice to end tenancy*].

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(4) Within 5 days after receiving a notice under this section, the tenant may

- (a) pay the overdue rent, in which case the notice has no effect,
- or
- (b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit to which the notice relates by that date.

I find that the Tenants did not pay the outstanding utilities or dispute the Notice, and are conclusively presumed to have accepted the tenancy ended on the effective date of the Notice.

I find that the Landlord is entitled to a Monetary Order for unpaid rent for July 2018 and the outstanding utilities.

Section 55(2) of the *Act* states that a landlord may request an order of possession if a notice to end tenancy has been given by the landlord and the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

Pursuant to sections 55 and 67 of the *Act*, I grant the Landlord an order of possession and a monetary order in the amount of \$2,957.72, which is comprised of, \$925.00 for the July 2018, rent and 2,023.72 for the outstanding utilities.

Having been successful, I also find the Landlord is entitled to recover the \$100.00 filing fee.

Conclusion

I grant an Order of Possession to the Landlord effective not later than 2 days after service of this Order upon the Tenant.

I find for the Landlord under sections 67 and 72 of the Act. I grant the Landlord a Monetary Order in the amount of \$3,057.72 for the outstanding rent and utilities, and for the recovery of the filing fee for this application. The Landlord is provided with this Order in the above terms, and the Tenant must be served with this Order as soon as possible. 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: July 23, 2018

Residential Tenancy Branch