



Dispute Resolution Services

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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 pursuant to section 55;
- a monetary order for unpaid rent and utilities 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. The tenant did not attend this hearing, although I waited until 9:42 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 9:00 a.m. The landlord attended the hearing and was given a full opportunity to provide affirmed testimony, to present evidence and make submissions.

The landlord testified that on September 12, 2018, he personally served the tenant with a copy of the Application for Dispute Resolution and Notice of Hearing. The tenant was still residing in the rental unit at the time of service.

Based on the above evidence, I am satisfied that the tenant was personally served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to sections 89 & 90 of the Act. The hearing proceeded in the absence of the tenant.

The landlord obtained an order of possession in a previous decision dated September 24, 2018 and the tenant has since vacated the rental unit; accordingly, the landlord withdrew his application for an order of possession.

Issues

Is the landlord entitled to a monetary award for unpaid rent and 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 May 1, 2012 with a monthly rent of \$975.00 payable on the 1st day of each month. The tenant was also responsible for 60% of the utilities bill for natural gas. The rental unit was the larger upper portion of a house and another tenant occupied the lower portion. Each tenant had their own meter for electricity and this part of the utilities was in the tenant's own name. The tenant paid a security deposit of \$500.00 at the start of the tenancy which the landlord continues to hold.

The landlord's claim is for outstanding rent in the amount of \$5900.00. The landlord testified that this includes unpaid rent for the period of July 2017 to September 2018. The landlord is also claiming for outstanding utilities in the amount of \$347.72. The landlord testified that this includes unpaid utilities for the period of February 2018 to September 2018. The landlord submitted a spreadsheet detailing the rent and utilities amounts paid and outstanding over these periods as well as bank statements as proof of utilities amounts paid by the landlord and a history of payments received from the tenant.

Analysis

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I accept the landlord's uncontested evidence and find that the tenant was obligated to pay monthly rent in the amount of \$975.00 plus 60% of the natural gas. I find the tenant failed to pay the required rent and utilities in full for the dates as claimed by the landlord. I accept the landlord's claim and undisputed testimony and evidence for outstanding rent and utilities of \$6247.72.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application for a total monetary award of \$6347.72.

The landlord continues to hold a security deposit of \$500.00. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award pursuant to section 38 of the Act.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$5847.72.

Conclusion

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$5847.72. 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: October 23, 2018

Residential Tenancy Branch