



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC MNRL FFT FFL

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- An order to cancel Landlords' 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("Ten-Day Notice") for possession pursuant to section 46; and
- Authorization to recover the filing fee for this application pursuant to section 72.

The hearing also dealt with a cross-application by the landlords under the *Act* for the following:

- An order for possession under a Ten-Day Notice pursuant to section 46;
- A monetary award for unpaid rent and utilities pursuant to section 67; and
- Authorization to recover the filing fee for this application pursuant to section 72.

The landlords attended the hearing but the tenant did not. I kept the teleconference line open from the time the hearing was scheduled, plus an additional fifteen minutes, to allow the tenant the opportunity to call. The teleconference system indicated only the landlords and I had called into the hearing. I confirmed the correct call in number and participant code for the tenant had been provided.

Rule 7.3 of the Rules of Procedure provides as follows:

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 reapply.

Accordingly, in the absence of any testimony from the tenant in this matter, I order the tenant's application in its entirety dismissed without liberty to reapply.

In regard to the landlords' cross-application, the landlords were given an opportunity to present affirmed testimony, call witnesses and submit evidence.

The landlords testified the tenant was served by registered mail with the Notice of Hearing and Application for Dispute Resolution sent on November 18, 2018 and provided a Canada Post tracking number in support of service. Pursuant to sections 89 and 90 of the *Act*, I find the tenant was served with the Notice of Hearing and Application for Dispute Resolution five days later, on November 23, 2018.

At the outset of this matter, the landlords testified that the tenant has vacated the property and the landlords accordingly withdrew their application for an order for possession.

Issue(s) to be Decided

- Are the landlords entitled to monetary award for unpaid rent and utilities pursuant to section 67; and
- Are the landlords entitled to recover their filing fee for this application pursuant to section 72.

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement dated February 24, 2018 and 28, 2018, indicating a monthly rent of \$1,600.00, due on the last day of each month with a security deposit of \$800.00 and no pet damage deposit. The tenancy agreement does not have any provisions for the payment of utilities;
- A copy of a Notice to End Tenancy dated November 6, 2018 for \$1,600.00 in unpaid rent due on October 31, 2018, with a stated effective vacancy date of November 15, 2018 ;
- A copy of the witnessed Proof of Service of the Notice showing that the landlord served the Notice to the tenant by posting the notice on the tenant's door on November 6, 2018;
- A copy of a Canada Post receipt and tracking slip dated November 19, 2018; and

- A copy of a water utility bill invoiced to the tenant stating outstanding water bill charges of \$282.05 as of October 11, 2018.

The Notice restates section 46(4) of the *Act* which provides that the tenant had five days to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the effective date of the Notice.

The landlords testified the tenant has vacated the property at some time towards the end of November 2018. However, although the tenant has left the property, the landlords have claimed that the tenant left garbage behind in the unit. The landlords testified that the tenant has not provided a forwarding address and that the landlords testified that they still retained the full damage deposit

The landlords testified that the last payment of rent by the tenant was paid on September 30, 2018 for the tenant's October 2018 rent. The landlords claim that they are owed the November 2018 rent.

The landlords have submitted a completed Monetary Order Worksheet in support of their monetary claims showing the following claims for unpaid rent and utilities:

ITEM	AMOUNT
Outstanding rent November 2018	\$1,600.00
Outstanding water utility bills	\$282.50
TOTAL	\$1,882.50

Analysis

I have reviewed all documentary evidence provided by the landlord. and I find that the tenant has been duly served with the Ten-Day Notice and I find the form and content of the Ten-Day Notice complies with section 52 of the *Act*.

I accept the landlord's evidence and find that the tenant has not made rent payments owed under this tenancy agreement since October 2018 and that the tenant owes the landlords \$1,600.00 for the unpaid November 2018 rent.

However, I do not find that the landlords have produced satisfactory evidence to establish that, on a balance of probabilities, the tenant has a contractual obligation to pay the outstanding water utility bill. The tenancy agreement does not have any terms requiring the tenant to pay the utility bills.

During the hearing, the landlords argued that they are entitled to reimbursement of the utility bills because the tenancy agreement did not specifically include utilities as being

included in rent. The landlords argued that, since utilities were not included in the tenancy agreement, the tenant was obligated to obtain their own utility services and now the landlords should get reimbursed for this unpaid utility invoice since the utility company may demand payment from the landlords.

However, I do not find this argument persuasive. The landlords did not produce any corroborating evidence from the utility company to show that the landlords will in fact be liable to the utility company for these unpaid invoices. In addition, even if the landlords are liable to the utility company for these unpaid utility bills, the landlords have produced no contractual basis upon which to demand reimbursement from the tenant. Accordingly, I herein dismiss the landlords' request for reimbursement of the utilities without leave to re-apply.

The landlords continue to hold the tenant's security deposit of \$800.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain tenant's security deposit in partial satisfaction of the monetary claim.

In summary, I grant the landlord a monetary order for **\$900.00** calculated as follows:

Item	Amount
Outstanding Rent November, 2018	\$1,600.00
Less Security Deposit held by landlords	(\$800.00)
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$900.00

Conclusion

I grant the landlords a monetary order in the amount of **\$900.00** as set out in the table below:

Item	Amount
Outstanding Rent November, 2018	\$1,600.00
Less Security Deposit held by landlords	(\$800.00)
Recovery of Filing Fee for this Application	100.00

Total Monetary Order	\$900.00
-----------------------------	-----------------

If the tenant fails to comply with this order, the landlord may file the order in the Provincial Court (Small Claims) to be enforced as an order of that Court. The remaining portion of the landlord's monetary claim is dismissed without leave to reapply.

The landlords withdrew their application for an Order of Possession as the tenant has moved out.

The tenant's application is dismissed without leave to reapply.

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: December 17, 2018

Residential Tenancy Branch