



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with the landlords' 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 pursuant to section 67;
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The landlord attended the hearing via conference call and provided testimony. The landlord, B.S.M. was unrepresented. The tenant did not attend or submit any documentary evidence. The landlord provided testimony that the tenant was served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on February 25, 2019. The landlord provided a copy of the Canada Post Receipt and Tracking Label in confirmation of service. A review of the Canada Post online tracking system shows the package was delivered and signed for by D.F. on March 18, 2019. I accept the undisputed evidence of the landlord and find that the tenant was properly served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail as per sections 88 and 89 of the Act. Although the tenant did not attend, I find the tenant is deemed served 5 days later on March 2, 2019.

Extensive discussions with the landlord and her translator revealed that an order of possession was no longer required. The landlord reported that approximately 3 weeks prior to the scheduled hearing time, the landlord attended the rental unit to discover that the tenant had vacated the rental unit leaving it empty. As such, no further action is required for this portion of the landlord's application. The hearing proceeded on the landlord's monetary portion only.

The landlord also stated that as of the date of this hearing the tenant has not provided a forwarding address in writing for return of the security deposit.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for unpaid rent and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The landlord stated that this tenancy began on November 12, 2018 on a month-to-month basis as per a verbal tenancy agreement. The monthly rent was \$2,000.00 payable on the 2nd day of each month. A security deposit of \$1,000.00 was to be paid, but the landlord stated that the tenant had never paid this amount. The landlord also stated that as part of this tenancy agreement, the tenant would pay for all of the utilities for the rental.

The landlord states that the tenant was served with a 10 Day Notice dated February 8, 2019 via Canada Post Registered Mail on February 8, 2019 and has submitted a copy of the Canada Post Customer Receipt Tracking Number (as noted on the cover of this decision). The landlord completed a proof of service document, Canada Post Receipt and Canada Post Customer Tracking Label in confirmation of this service.

The 10 Day Notice dated February 8, 2019 states in part that the tenant failed to pay rent of \$3,900.00 that was due on February 2, 2019 and that utilities of \$1,135.53 were unpaid after a written demand to pay was given. No date was provided on the notice. The 10 Day Notice also sets out an effective end of tenancy date of February 18, 2019. A review of the Canada Post online tracking system shows the package was delivered and signed for by D.F. on February 20, 2019.

The landlord clarified that she seeks a monetary claim of \$4,035.53 for unpaid rent and utilities, which consists of:

\$900.00	Unpaid Rent, January 2019
\$2,000.00	Unpaid Rent, February 2019

\$404.96	Unpaid Utilities, Hydro
\$241.50	Unpaid Utilities, Fortis
\$226.79	Unpaid Utilities, Fortis
\$111.08	Unpaid Utilities, Fortis
\$49.57	Unpaid Utilities, Water
\$1,135.53	Unpaid Utilities, Total

The landlord confirmed that some partial payments were made for rent, but that the above noted amounts were outstanding.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

In this case, I accept the undisputed evidence of the landlord and find that a claim has been established for unpaid rent and utilities totalling, \$4,035.53 as made by the landlord. The landlord provided undisputed testimony that monthly rent was \$1,100.00 and that the tenant had failed to pay rent for January and February 2019 as outlined in the landlord submitted copy of a 10 Day Notice dated February 8, 2019, the direct request monetary worksheet and the landlord's direct testimony. I find that the tenant was properly served with the 10 Day Notice dated February 8, 2019 via Canada Post Registered Mail as shown in the submitted supporting evidence of the Canada Post Receipt and copy of the Customer Receipt Tracking label. I also accept the undisputed evidence of the landlord regarding unpaid utilities based upon the submitted copies of invoices/receipts.

The landlord's monetary claim for \$4,035.53 has been successful. The landlord having been successful is also entitled to recovery of the \$100.00 filing fee.

Conclusion

The landlord is granted a monetary order for \$4,135.53.

This order must be served upon the tenant. Should the tenant fail to comply with the order, the 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: April 04, 2019

Residential Tenancy Branch