



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AUMOL PROPERTIES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, OPR, MNR, FF

Introduction

The landlord and the tenant convened this hearing in response to applications.

The landlord's application is seeking orders as follows:

1. For an order of possession based on unpaid rent;
2. For a monetary order for unpaid rent; and
3. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. To be allowed more time to make an application to dispute a notice to end tenancy; and
2. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, issued on June 26, 2019.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to relevant facts and issues in this decision.

Preliminary and Procedural matter

In this case, the tenant has added their children as tenants in their application. However, they are not a tenant in the tenancy agreement. Therefore, I have removed the children from the style of cause.

Issues to be Decided

Should the Notice be cancelled?

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order?

Background and Evidence

The tenancy agreement indicates the tenancy began on March 1, 2019. Rent in the amount of \$1,900.00 was payable on the first of each month. A security deposit of \$950.00 and a pet deposit of \$950.00 were paid by the tenant

The landlord's agent testified that on June 26, 2019, the tenant was served with the Notice indicating that the tenant had failed to the amount of \$750.00 in unpaid rent.

The landlord's agent testified that that on July 1, 2019, they received a payment of \$1,300.00. That was for the outstanding rent and a portion of July 2019, rent. The agent stated that the tenant is still in rent arrears.

The tenant testified that they would not be in any arrears if they were not paying the full utilities for the property, which is contrary to the tenancy agreement. The tenant stated that they were required to put the utilities in their name by the owner at the start of the tenancy, although they are not responsible for the full cost of the services.

The landlord's agent testified that this was an arrangement made prior to their involvement with the owner that the tenant would have the utilities in their own name. The agent stated that they have continuously asked the tenant for a copy of the utilities so they can credit the tenant's account. The agent stated the copy that they did receive from the tenant also included a balance owed by the tenant for their previous rental premise and they asked specifically for the utilities relating to the subject property, which they still have not received.

Analysis

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

How to end a tenancy is defined in Part 4 of the Act.

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].

...

*(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.

The tenant was served with the Notice on June 26, 2019, that indicated rent in the amount of \$750.00 was outstanding. On July 1, 2019, the tenant paid the amount of \$1,300.00. I find the tenant paid the overdue rent within 5 days as required by the Act. Therefore, I find the Notice is cancelled and has no effect.

While there may be overdue rent for July 2019 or August 2019; that is not for me to consider at today's hearing.

Further, the tenant is required to pay 65% of the utilities under the terms of their tenancy. The utilities are currently in the tenant's name. The tenant has not received any credit for the 35% that the tenant is not responsible to pay. I find it is unfair and unreasonable that the tenant is in the position that they cannot pay their full rent, when they have not received any credits for the 35% owed by the landlord since their tenancy commenced.

I find it appropriate to make the following orders.

I Order the landlord to have the shared utilities placed in their name, no later than **September 1, 2019**. The tenant will be required to pay their portion of 65%, when they receive a copy of the utility invoice from the landlord.

I Order the tenant to provide a copy of all invoices for the shared utilities to the landlord or landlord's agent from when the utilities were placed in their name. The tenant is to provide all previous invoices to the landlord by **September 1, 2019** and any subsequent invoices as soon as they are made available.

I Order the landlord to credit the tenant 35% of the said invoices as soon as they are provided to the landlord.

I Order the tenant to pay any outstanding arrears of rent, if any, as soon they have received the proper credits for the overpayment of utilities. Should the tenant failed to pay the outstanding rent the landlord may issue a notice to end tenancy pursuant to section 46 of the Act.

In light of the above, I grant the tenant's application to cancel the Notice. The tenancy will continue in accordance with the Act.

The tenant had applied to be allowed to make an application to dispute a notice to end tenancy; however, I need not consider this portion of the tenant's application because the Notice had no effect as the overdue rent was paid on July 1, 2019 and there was no requirement for the tenant to dispute the Notice.

As rent the overdue rent was paid within 5 days, I must dismiss the landlord's application for an order of possession and a monetary order. Since the landlord was not successful, I decline to award the cost of the filing fee to the landlord.

This decision makes no finding on rent for July and August 2019.

Conclusion

The tenant's application is granted. The landlord's application is dismissed.

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: August 19, 2019

Residential Tenancy Branch