



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *OPR, CNR, OLC, MNDC, RP, FF*

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and for a monetary order for unpaid rent, unpaid utilities and the filing fee. The tenant applied to cancel the notice to end tenancy for non-payment of rent and for a monetary order for compensation for loss under the *Act*. The tenant also applied for an order directing the landlord to comply with the *Act* and carry out repairs.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Both parties represented themselves.

As both parties were in attendance, I confirmed service of documents. The tenant confirmed receipt of the landlord's evidence. The landlord stated that he had not received any documents from the tenant other than the notice of hearing. Therefore the tenant's evidence was not used in the making of this decision. I find that evidence was served to the tenant in accordance with sections 88 and 89 of the *Act*.

RTB Rules of Procedure 2.3 states that if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply.

In this regard I find the tenant has applied for a monetary order for compensation and for an order for the landlord to comply with the *Act and* carry out repairs. As these sections of the tenant's application are unrelated to the main section which is to cancel the 10-day notice, I dismiss these sections of the tenants claim with leave to reapply.

Accordingly this hearing only dealt with the landlord's application for an order of possession and a monetary order for unpaid rent, unpaid utilities and the filing fee and the tenant's application to set aside the notice to end tenancy.

Issues to be decided

Is the landlord entitled to an order of possession or should the notice to end tenancy be set aside? Is the landlord entitled to a monetary order?

Background and Evidence

The parties agreed to the following. The tenancy started on January 15, 2012 and the current monthly rent is \$1,559.00 payable on the first of the month. The rent did not include utilities. Prior to moving in the tenant paid a security deposit of \$700.00. A copy of the rental agreement signed by both parties and dated January 03, 2012 was filed into evidence. The rental amount indicates that utilities are not included in the rent.

The landlord stated that the tenant failed to pay full rent for June 2019 and owed a balance of \$559.00. The tenant agreed that she paid \$1,000.00 on June 01, 2019 and stated that she paid the balance sometime later but had lost the receipt. The landlord testified that the rent receipt for \$1,000.00 was dated June 01, 2019 and contained a note stating that \$559.00 was owing.

The tenant agreed that she paid \$200.00 for August 2019 and owed \$1,359.00 in unpaid rent for August 2019. The tenant also agreed that she had not paid rent that was due on September 01 and October 01, 2019.

On September 02, 2019, the landlord served the tenant with a notice to end tenancy for \$1,559.00 in unpaid rent for September 2019. The tenant disputed the notice in a timely manner and continued to occupy the rental unit without paying rent. The landlord stated as of the date of this hearing, the tenant owes rent for the months of June (\$559.00), August (\$1,359.00), September (\$1,559.00) and October (\$1,559.00).

On July 15, 2019 the landlord served the tenant with a demand letter for unpaid utilities and on September 16, 2019, served the tenant with a 10 day notice to end tenancy for unpaid utilities. The landlord testified that the tenant owes \$1,102.63 in unpaid water bills and filed copies of the unpaid bills to support his testimony. The landlord stated that the tenant owes a total of \$6,138.63 in unpaid rent and unpaid utilities.

Analysis

Pursuant to section 46 (4) of the *Residential Tenancy Act* within five days after receiving the notice to end tenancy, the tenant may pay the overdue rent or dispute the notice by making application for dispute resolution.

If the tenant does not pay rent or dispute the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit, by that date.

Based on the sworn testimony and documentary evidence of both parties, I find that the tenant received the notice to end tenancy for unpaid rent, on September 02, 2019 and did not pay rent within five days of receiving the notice to end tenancy and the time to do so has expired. I

further find that the tenant received a notice to end tenancy for unpaid utilities on September 16, 2019 and did not pay within five days of receiving the notice to end tenancy and the time to do so has expired.

In these situations, the *Residential Tenancy Act* provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the notice. Pursuant to section 55(2), I am issuing a formal order of possession effective by 1:00pm on November 01, 2019. The order may be filed in the Supreme Court for enforcement.

I find that the landlord has proven his monetary claim in the amount of \$6,138.63 in unpaid rent and unpaid utilities. Since the landlord is successful in his application, I award the landlord the recovery of the filing fee of \$100.00. Overall the landlord has established a total claim of \$6,238.63. I grant the landlord an order under section 67 of the *Residential Tenancy Act* for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord an order of possession effective by 1:00pm on November 01, 2019 and a monetary order in the amount of \$6,238.63.

The remainder of the tenant's application is dismissed with 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: October 08, 2019

Residential Tenancy Branch