



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF, CNR

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent 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 his/her/their/its filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46.

The landlord attended the hearing via conference call and provided undisputed testimony. The tenant did not attend. The landlords confirmed that they were served with the tenant's application for dispute and that they were aware of the listed issues.

I waited until 11 minutes past the start of the scheduled hearing time in order to enable both parties to connect with this teleconference hearing.

Rule 7 of the Rules of Procedure provides that:

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

7.2 Delay in the start of a hearing

In the event of a delay of a start of a conference call hearing, each party must stay available on the line to commence the hearing for 30 minutes after the time scheduled for the start of the hearing.

In the event of a delay of a face-to-face hearing, unless otherwise advised, the parties must remain available to commence the hearing at the hearing location for 30 minutes after the time scheduled for the start of the hearing.

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 re-apply.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent.

If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Accordingly, in the absence of any evidence or submissions from the tenant and in the absence of the tenant's participation in this hearing, I order the application dismissed without leave to reapply. I make no findings on the merits of the matter.

The hearing shall proceed only on the landlord's application.

The landlord stated that the tenant was personally served with the notice of hearing package and the submitted documentary evidence. I accept the undisputed testimony of the landlord and find that the tenant has been sufficiently served as per sections 88 and 89 of the Act.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord 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 both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began on February 1, 2019 on a fixed term tenancy ending on August 31, 2019 and then thereafter on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated January 6, 2019. The monthly rent is \$1,750.00

payable on the 31st day of each month. A security deposit of \$875.00 and a pet damage deposit of \$875.00 were paid on February 1, 2019.

The landlord stated that the tenant was served with the 10 Day Notice dated August 4, 2019 in person on August 4, 2019 for unpaid rent of \$1,100.00 that was due on July 31, 2019 and for unpaid utilities in the amount of \$204.47 following written demand on July 23, 2019. The 10 Day Notice sets out an effective end of tenancy date of August 14, 2019.

During the hearing the landlord admitted that the 10 Day Notice dated August 4, 2019 was flawed in that the amount of rent owed was incorrect. The landlord stated that no notice of amendment was filed advising the tenant of the issue.

The landlord seeks an order of possession and a monetary claim for unpaid rent, unpaid utilities, recovery of the filing fee and to offset this claim against the security and pet damage deposits held. The landlord has detailed the monetary claim in a revised monetary worksheet for \$4,962.45 as:

\$1,000.00	Unpaid Rent, August 2019
\$204.47	Unpaid Utilities, June/July
\$171.98	Unpaid Utilities, July/September
\$1,750.00	Unpaid Rent, September 2019
\$1,750.00	Unpaid Rent, October 2019
\$86.00	Estimated Unpaid Utilities, Pro-rated Sept18-Oct18

In support of these claims the landlord has provided copies of the utility bills for this period of time and details that the estimated unpaid utilities is based upon a pro-rated amount from the previous July/September claim. The landlord noted that the season approaching is colder and that this amount is going to be higher. The landlord noted that as of the date of this hearing, no notice has been received or keys returned from the tenant and the landlord is still unsure if the tenant has or has not vacated the rental unit.

Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

In this case, I accept the undisputed evidence of the landlord and find that the landlord did properly serve the tenant with the 10 Day Notice dated August 4, 2019. However, during the hearing the landlord admitted that the amount on the 10 Day Notice was incorrect and that no steps were taken to amend or give notice to the tenant. On this basis, I find that the 10 Day Notice dated August 4, 2019 is set aside and cancelled due to this deficiency.

On the landlord's clarified monetary claim of \$4,962.45, I find that the landlord has been successful. The landlord provided undisputed testimony that rent and utilities have not been paid as claimed based upon the submitted utility invoices.

The landlord having been successful is also entitled to recovery of the \$100.00 filing fee. In offsetting these claims, I authorize the landlord to retain the combined \$875.00 security deposit and the \$875.00 pet damage deposits in partial satisfaction of the above noted claim.

Conclusion

The landlord is granted a monetary order for \$3,365.45.

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: October 11, 2019

Residential Tenancy Branch