



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPU, MNRL-S**

Introduction

This hearing was scheduled for 9:30 a.m. on this date, via teleconference call, to deal with the landlord's application for an Order of Possession for unpaid rent and utilities, a Monetary Order for unpaid rent and utilities; and, authorization to retain the tenant's security deposit.

The landlord and his daughter, who was representing the landlord, appeared for the hearing; however, there was no appearance on part of the tenant.

The landlord's representative testified that the hearing package was sent to the tenant via courier on November 20, 2020. A courier receipt was provided. I informed the landlord that sending the hearing package via courier is not a permitted method of service under section 89 of the Act.

The landlord's representative provided sworn testimony that she also served the hearing package to the tenant in person on November 23, 2020 when the tenant informed the landlord that he had money to give to the landlord and the landlord's daughter went to the rental unit to collect it. At the same time, she took a copy of the proceeding package and gave it to the tenant. I accepted the sworn testimony of the landlord's daughter that she served the tenant with the proceeding package, in person at the rental unit, on November 23, 2020 and I continued to hear from the landlord without the tenant present.

The landlord's daughter testified that the tenant vacated the rental unit at the end of January 2021 and confirmed the landlord has regained possession of the rental unit. In these circumstances, the landlord no longer requires an Order of Possession and I do not provide one with this decision.

The landlord requested the monetary claim be amended to reflect the payment received from the tenant on November 23, 2020 and the loss of rent for the months of December 2020 and January 2021 while the tenant continued to hold possession of the rental unit.

Rule 4.2 of the rules of Procedure provides for amending an application at the hearing, as follows:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

Based on the circumstances described to me by the landlord's representative, I find it just and reasonably anticipated to amend the claim as requested and I amended the claim accordingly.

Issue(s) to be Decided

1. Is the landlord entitled to a Monetary Order for unpaid and/or loss of rent and utilities, as amended?
2. Is the landlord authorized to retain the tenant's security deposit?
3. Award of the filing fee.

Background and Evidence

The tenancy commenced approximately two years ago. The parties did not execute a written tenancy agreement. The landlord collected a security deposit of \$825.00 and the tenant was required to pay rent of \$1650.00 on the first day of every month. The tenant was also required to pay 50% of the gas bills.

On October 9, 2020 the landlord wrote a note to the tenant indicating the tenant still owed \$140.00 for gas and rent. The note was included in evidence.

The tenant's cheque in the amount of \$1670.00, dated October 15, 2020, was dishonoured on October 30, 2020 due to insufficient funds. The memo line of the cheque indicates the cheque was for rent and gas.

The tenant did not pay rent when due for November 2020 and on November 3, 2020 the landlord issued a 10 Day Notice to End Tenancy for Unpaid rent and Utilities ("10 Day Notice"). The 10 Day Notice indicates the tenant had failed to pay rent of \$3300.00 as of November 1, 2020 and utilities of \$40.00 that were demanded in writing on October 9, 2020.

The tenant did not file to dispute the 10 Day Notice but paid the landlord's daughter \$1900.00 in cash on November 23, 2020. The landlord's daughter testified that she issued a receipt indicating the money was being accepted for "use and occupancy only".

The landlord's daughter testified that the tenant did not pay any more money after November 23, 2020 and continued to occupy the rental unit until the end of January 2021.

The landlord seeks to recover unpaid and/or loss of rent for the months of October 2020 through January 2021, less the \$1900.00 payment made on November 23, 2020; and, \$40.00 for utilities.

Documentary evidence provided by the landlord included copies of: the 10 Day Notice; the written demand for utilities; gas bills issued in September 2020 and October 2020 that show charges of \$41.43 and \$40.84 respectively; and, a copy of the dishonoured cheque dated October 15, 2020.

Analysis

Under section 26 of the Act, a tenant is required to pay rent when due under their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has a legal right under the Act to withhold or otherwise not pay the rent due to the landlord.

Section 1 of the Act defines "tenancy agreement" to include tenancy agreements entered into orally and by implied or express terms.

I accept the unopposed evidence before me that a tenancy formed between the parties and the tenant was required to pay rent of \$1650.00 on the first day of every month and

50% of the gas bills. There is no evidence before me to suggest the tenant had a lawful right to withhold rent from the landlord.

I accept the unopposed evidence that the tenant's rent cheque for October 2020 was dishonoured and the tenant still owes rent for October 2020 and November 2020 less the \$1900.00 payment he made on November 23, 2020. Therefore, I award the landlord unpaid rent of \$3300.00 less \$1900.00, or \$1400.00.

As for loss of rent for December 2020 and January 2021, I accept the unopposed evidence before me that the tenant continued to occupy the rental unit during these months and did not pay any monies for the continued occupation. Therefore, I award the landlord \$3300.00 for loss of rent for these two months.

With respect to the landlord's claim for unpaid utilities, the landlord provided two utility bills that total \$82.16 (\$41.43 + \$40.84). It would appear the tenant had intended to pay \$20.00 as his portion of the September 2020 bill in giving the landlord the cheque in the sum of \$1670.00, which was subsequently dishonoured. I heard the tenant did not pay anything toward the October 2020 gas bill. Therefore, based on these two bills, I grant the landlord's request to recover \$40.00 for utilities, as claimed.

I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the unpaid rent.

In keeping with all of the above, I provide the landlord with a Monetary Order to serve and enforce upon the tenant, calculated as follows:

Unpaid rent for October and November 2020	\$1400.00
Loss of rent for December 2020 and January 2021	3300.00
Unpaid utilities incurred in Sept and Oct 2020	40.00
Less: security deposit	<u>-825.00</u>
Monetary Order for landlord	\$3915.00

Conclusion

The landlord is authorized to retain the tenant's security deposit and is provided a Monetary Order for the balance owing of \$4015.00 to serve and enforce upon the tenant.

The landlord has already regained possession of the rental unit and an Order of Possession is not provided with this decision.

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: February 05, 2021

Residential Tenancy Branch