



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, LRE, OPU-DR, OPUM-DR, FFL

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied for:

1. An Order cancelling a notice to end tenancy - Section 46;
2. An Order for the Landlord’s compliance - Section 62; and
3. An Order restricting the Landlord’s entry - Section 79.

The Landlord applied for:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent or utilities - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant did not attend the hearing to pursue its claims. The Landlord confirms that the Tenant has moved out of the unit as of January 9, 2021 and that the Landlord does not require an order of possession. Given this undisputed evidence and as the Tenant’s claims are only related to an ongoing tenancy, I dismiss the Tenant’s application. I also dismiss the Landlord’s claim for an order of possession. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

I accept the Landlord’s evidence that the Tenant was served with the application for dispute resolution, notice of hearing and all evidence (the “Materials”) by registered mail

on January 8, 2021 in accordance with Section 89 of the Act. Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find that the Tenant is deemed to have received the Materials on January 13, 2021.

The Landlord confirms that the first name of Landlord JC as set out on the Tenant's application is not correct. The Tenant RC is not named as a Tenant on the tenancy agreement.

Issue(s) to be Decided

Is the Landlord entitled to unpaid rent and utilities?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy under written agreement started October 1, 2020 on a fixed term to end May 31, 2021. Rent of \$1,650.00 is payable on the first day of each month. The rent does not include utilities. The Parties verbally agreed that the Tenant would pay the cable and internet costs in a set amount of \$149.00 for each month of the tenancy. At the outset of the tenancy the Landlord collected \$825.00 as a security deposit.

The Tenant failed to pay rental arrears of \$825.00 for December 2020. The Tenant also failed to pay rent for January 2021 and the Landlord claims \$495.00 for the period January 1 to 9, 2021.

The Tenant failed to pay the cable and internet costs for the period October 22, to November 21, 2020 and for the period November 22 to December 21, 2020. The Landlord claims \$298.00.

The Tenant failed to pay the gas costs of \$61.95 for the period October 13, to November 20, 2020. The Landlord provides the invoice for these costs claimed.

The Landlord claims further gas costs for the period of November 10, 2020 to January 15, 2021 and for hydro costs for the period November 10, 2020 to January 1, 20221 that were accrued while the Tenant was occupying the unit but did not provide the invoices for these costs as they were out of time to add this evidence.

Analysis

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement whether or not the landlord complies with this Act, the regulations or the tenancy agreement. Based on the undisputed evidence of rents unpaid and given the rental terms of the tenancy agreement I find that the Landlord has substantiated an entitlement to **\$1,320.00** (825.00 + 495.00).

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. Given the terms of the tenancy agreement for utilities, including the undisputed evidence that the Parties agreed to the payment of a standard amount of \$149.00 monthly for the cable and internet I find that the Landlord has substantiated an entitlement to **\$298.00** for the period October 22 to December 21, 2020.

Given the terms of the tenancy agreement, the Landlord's undisputed evidence of unpaid gas costs for the period October 13 to November 10, 2020 and the invoice provided as evidence, I find that the Landlord has substantiated an entitlement to **\$61.95**.

As the Landlord provided no other invoices for utility costs, I dismiss the Landlord's claim for gas costs for the period of November 10, 2020 to January 15, 2021 and for

hydro costs for the period November 10, 2020 to January 1, 20221 with leave to reapply.

As the Landlord's application has met with some success, I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$1,779.95**.

Deducting the security deposit plus zero interest of **\$825.00** leaves **\$954.95** owed to the Landlord. The monetary order only names the Landlords as correctly spelled by the Landlord and does not include Tenant RC as this person is not named as a Tenant on the tenancy agreement.

Conclusion

I Order the Landlord to retain security deposit plus interest of **\$825.00** in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the remaining **\$954.95**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: March 11, 2021

Residential Tenancy Branch