



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SANDHILL PROPERTIES INC. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPUM-DR, OPU-DR, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for unpaid rent/utilities pursuant to section 55;
- a monetary order for unpaid rent/utilities pursuant to section 67;
- authorization to recover its filing fee for this application from the tenants pursuant to section 72.

The landlord and the tenant, S.N. attended the hearing via conference call and provided affirmed testimony. The tenant, D.A. did not attend or submit any documentary evidence and was unrepresented.

Both parties were advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

Both parties confirmed the landlord served both tenants with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail. The tenant confirmed that no documentary evidence was submitted. I accept the undisputed affirmed evidence of both parties and find that the tenant, S.N. was properly served as per sections 88 and 89 of the Act. However, the tenant, D.A. was not. Discussions throughout the hearing revealed that the tenant, D.A. according to the tenant, S.N. vacated the rental unit approximately 1 year prior to the tenant, S.N. on December 26, 2020. The landlord stated that he was aware of the tenant, D.A. moving. On this basis, I find that the landlord's claim against the named tenant, D.A. to be dismissed as the tenant, D.A. has not been properly served. As such, the tenant, D.A.'s name shall be removed from this application.

At the outset, the tenant stated that the Residential Tenancy Branch did not have jurisdiction to resolve this dispute as this was a “Rent to Own” situation. The landlord disputed this claim that the tenant had an option to purchase agreement along with a separate rental agreement. The landlord stated that the tenant paid a \$10,000.00 non-refundable deposit for an option to exercise a right to purchase for a limited period until June 15, 2017. The landlord stated that the deadline to exercise an option to purchase was extended for the tenant until June 15, 2018. The landlord stated that the tenant never exercised the option and as such it ended on June 15, 2018. The tenant argued that he had a verbal agreement to continue with the option to purchase but was unable to provide any further details. The landlord disputed this claim stating that he does not make any agreements verbally, everything is done in writing. I find on a balance of probabilities in this circumstance that while an option to purchase was made, based upon the evidence provided that the option had lapsed and was no longer applicable. As such, I find that the Residential Tenancy Branch does have jurisdiction and the hearing shall continue.

Both parties confirmed that as of the date of this hearing the tenants no longer occupy the rental unit. As such, on this basis, the landlord’s request for an order of possession is no longer required. No further action is required for this portion of the landlord’s application.

At the conclusion of the hearing, the tenant provided a new mailing address in Saskatchewan. As such, the Residential Tenancy Branch File shall be updated with the new mailing address.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent and/or utilities 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 applicant’s claim and my findings are set out below.

This tenancy began on June 15, 2018 on a fixed term tenancy ending on June 14, 2020 as per the submitted copy of the signed tenancy agreement dated May 28, 2018. The monthly rent is \$1,950.00 payable on the 15th day of each month. No deposits were paid.

The landlord seeks an order of possession and a monetary claim of \$7,056.48 which consists of:

\$6,956.48	Unpaid Rent,	\$5,850.00	
		September 2020	\$1,950.00
		October 2020	\$1,950.00
		November 2020	\$1,950.00
\$100.00	Unpaid Utilities, Filing Fee	\$1,106.48	

The landlord claims that the tenant failed to pay rent between September 2020 at \$1,950.00 per month November 2020 for a total of \$5,850.00. The landlord stated that as of the date of this hearing the tenant has not paid any of this rent. The tenant confirmed in his direct testimony that “he did not pay”.

The landlord also claims that the tenant failed to pay utilities of \$1,106.48 as per the submitted copy of the utilities statement. The tenant argued that he had paid \$620.00 towards the utilities but is unable to provide any proof of payment. The landlord stated that he was not aware of any utility payments made by the tenant.

Analysis

In this case, both parties confirmed that the tenant failed to pay rent of \$5,850.00 for the 3 month period between September 2020 and November 2020. On this basis, I find that the landlord is entitled to this portion of the claim.

The landlord seeks unpaid utilities of \$1,106.48. The tenant did not dispute the outstanding arrears but argued that he had paid \$620.00 towards the utilities, however, the tenant was unable to provide any proof of payment. The landlord stated that he was unaware of any utility payments. On this basis, I find that the landlord is entitled to the monetary claim of unpaid utilities of \$1,106.48. However, if the tenant is able to provide

to the landlord an official receipt confirming payment of \$620.00 to the local utility authority, then the tenant may apply this as a credit against the monetary claim.

The landlord having been successful is also entitled to recovery of the \$100.00 filing fee.

Conclusion

The landlord is granted a monetary order for \$7,056.48.

This order must be served upon the tenants. Should the tenants fail to comply with this 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: April 26, 2021

Residential Tenancy Branch