



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant: FFT, CNR, CNC, OLC, MNDCT, RP, LRE, LAT
Landlord: OPU-DR, MNU-DR, FFL

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on March 14, 2022. Both parties applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the “Act”).

Both parties attended the hearing and provided testimony.

Landlord’s Application

The Landlord stated he served the Tenant with his Notice of Dispute Resolution Proceeding in person but was not specific on the date. The Landlord did not provide any further proof of service to corroborate that he served the Notice of Dispute Resolution Proceeding or his evidence package, and only referred me to a proof of service document for the 10 Day Notice to End Tenancy that he served to the Tenant. The Tenant denied getting a copy of the Landlord’s Notice of Dispute Resolution Proceeding or the Landlord’s evidence package. The Tenant was unaware that the Landlord had filed a cross application. Overall, the onus is on the Landlord to demonstrate that he served the Tenant with his Notice of Dispute Resolution Proceeding and evidence. I find the Landlord has failed to sufficiently demonstrate that he served the Tenant with his application, Notice of Dispute Resolution Proceeding and evidence, in accordance with the Act. I dismiss the Landlord’s application, in full, with leave to reapply. Further, without further proof of service, I am not satisfied the Landlord served the Tenant with his evidence package. Given this, I find the Landlord’s documentary evidence is not admissible, and will not be considered further.

Tenant's Application

The Landlord acknowledged receipt of the Tenant's application, Notice of Dispute Resolution Proceeding and evidence package. I find the Tenant sufficiently served her application, Notice of Dispute Resolution Proceeding and evidence for the purposes of this proceeding.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Issues

At the outset of the hearing, the Tenant confirmed she has moved out of the rental unit, and she does not wish to pursue any of the grounds on her application. The Tenant requested that her application be dismissed in full, as she does not wish to pursue any of her application any further. The Landlord did not oppose this. The Landlord acknowledged that the Tenant has vacated the rental unit. Given the Tenant's request, and the fact that the tenancy is over, I find the Tenant's application is moot, and is dismissed, without leave to reapply.

I note section 55 of the Act states the following:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [landlord's notice: non-payment of rent], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

In this case, the Tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice), and since the Tenant's application is dismissed, I must turn to whether or not the Landlord is entitled to a monetary order for unpaid rent. This will be further addressed below.

Issues to be Decided

- Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

Both parties agreed in the hearing that monthly rent was \$1,750.00 up until the end of December 2021. As of January 1, 2022, the parties agree that rent was lawfully increased to \$1,776.26. Both parties agree that rent was due on the first of the month. The tenancy agreement shows that utility charges are not included in rent, and that the Tenant is to pay her share of the bills, which will remain in the Landlord's name. In the Tenancy Agreement, the Tenant also agreed to a late rent fee of \$50.00, if rent is not paid by the 3rd day of the month. Both parties agree the Landlord holds a security deposit in the amount of \$1,750.00.

The parties had several issues during the tenancy, and there was a degradation of the relationship in the months leading up to the end of the tenancy. There were allegations of drug cultivation, breaking and entering, hostile conduct, and utility fee manipulation.

The Landlord stated that the Tenant did not pay any rent or utilities from December 2021 onwards, and her last rent or utility payment was in November 2021. Both parties agree that the Tenant moved out sometime in late February 2022, but did not return the keys until March 9, 2022. The Landlord stated he did not actually know the Tenant had left until around March 9, 2022. The Landlord stated that the Tenant owes the following:

December 2021

- \$1,750.00 - base rent
- \$45.00 - Internet
- \$117.44 – electricity
- \$50.00 – late fee

January 2022

- \$1,776.26 – base rent
- \$45.00 – Internet
- \$50.00 – late fee

February 2022

- \$1,776.26 – base rent
- \$45.00 – Internet
- \$50.00 – late fee
- \$177.26 – electricity

March 2022

- \$1,776.26 – base rent
- \$45.00 – Internet
- \$50.00 – late fee

The Landlord also was seeking to collect a smoking fee. However, he was cautioned that this was not part of today's hearing about unpaid rent/utilities.

The Tenant acknowledges that she didn't pay any rent or utilities for December 2021, onwards but she spoke to some hardships she had over the past year with respect to COVID, income, and her issues with obtaining a roommate to help pay for rent.

The Landlord stated that the Tenant never gave any formal notice as to when she would be leaving, which made it hard to plan for her departure. The Tenant did not refute that she failed to give any notice that she would be moving out.

Analysis

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent.

After considering the evidence and testimony before me, I note the Landlord is seeking to recover unpaid rent and utility charges, and my authority to make related orders for the repayment of unpaid rent is granted to me under section 55(1.1) of the *Act*.

Section 46(6) allows unpaid utilities to be treated as unpaid rent, as follows:

46 (6)If

(a)a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b)the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

In this case, I find there is insufficient evidence that the Landlord gave the Tenant a written demand for unpaid utilities and that this written demand was outstanding for at least 30 days before treating it as unpaid rent, and to be included on the 10 Day Notice. The Landlord had no admissible documentary evidence showing that the Tenant was given a written demand for any unpaid utility amounts. The Tenant did not agree that the utility amounts on the 10 Day Notices were accurate. The Landlord also failed to provide copies of any internet bills, and only provided one of several electricity bills he states he is owed. Ultimately, I find the Landlord did not provide sufficient evidence as to what utilities are owed with supporting bills, amounts, and dates. I decline to award any utility amounts for this reason, and the Landlord must re-apply for any utility amounts he feels he is owed. I encourage the landlord to provide complete copies of relevant bills, should he wish to re-apply for these utility amounts.

With respect to the unpaid rent, I find the Tenant owes \$1,750.00 for December 2021, \$1,776.26 for January, \$1,776.26 for February. I note the Tenant may have moved out at the end of February. However, she does not refute that she failed to return the keys until March 9, 2022, and that she was not clear when she would be moving out. I find the Tenant breached section 45(1) of the Act by failing to give at least one month's notice before vacating. I am satisfied this caused the Landlord to incur a rental loss for March. I find the Landlord is entitled to the recovery of March rent in the amount of \$1,776.26, for breaching section 45(1) of the Act, and for failing to return keys and all means of access until part way through the month of March 2022. I also find the Tenant is responsible for late rent fees of \$50.00, as agreed in the tenancy agreement, for the months of December – March 2022.

In summary, I decline to award any utility amounts, and the Landlord has leave to reapply for those amounts. I award \$7,078.78 for rental losses for December till March 2022. I award \$200.00 for late rent fees for December 2021 through till March 2022. The Landlord is entitled to recover \$7,278.78.

I authorize that the security deposit, currently held by the Landlord, be kept and used to offset the amount owed by the Tenants. The Landlord is granted a monetary order for the balance, in the amount of \$5,528.78.

Conclusion

The landlord is granted a monetary order pursuant to Section 55 and 67 in the amount of **\$5,528.78**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: March 14, 2022

Residential Tenancy Branch