



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPU-DR, MNU-DR, FFL

Introduction

The Landlord filed an Application for Dispute Resolution by Direct Request (the “Application”) seeking an order of possession for the rental unit, a monetary order to recover the money for unpaid rent, and to recover the filing fee for the Application.

This participatory hearing was convened after the issuance of a June 16, 2022 Interim Decision of an Adjudicator. The Adjudicator determined that the Landlord’s Application could not be considered by way of the Residential Tenancy Branch’s direct request proceedings, as had been originally requested by the Landlord. The Adjudicator reconvened the Landlord application to a participatory hearing as they were not satisfied with basic details in the Landlord’s Application concerning the rental unit.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on August 22, 2022. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

Preliminary Matter – hearing notice to the Tenant

The agent of the Landlord (hereinafter the “Landlord”) gave the Tenant notice of this dispute resolution hearing by registered mail. The Landlord provided tracking information showing the package mailed to each of the Tenant’s on June 21, 2022. This included their prepared documentary evidence. The Landlord also applied for and obtained an order for substituted service, to send the material to the Tenant via email. The Adjudicator approved that request, with email being “the last email and contact information that they were responding to regularly” after the Tenant moved out from the rental unit on May 31, 2022.

Given the approved method of service, I find the Tenant had proper notice of this participatory hearing, as per s. 89(1)(f) of the *Act*; however, they did not attend.

Preliminary Matter – Tenant move out

At the start of the hearing, the Landlord presented that the Tenant moved out from the rental unit on May 31, 2022. I find the tenancy has ended; therefore, I dismiss the Landlord's Application for an Order of Possession, without leave to reapply.

Issue(s) to be Decided

Is the Landlord entitled to monetary compensation for unpaid rent pursuant to s. 67 of the *Act*?

Is the Landlord entitled to recover the filing fee for this application pursuant to s. 72 of the *Act*?

Background and Evidence

The Landlord submitted a signed copy of the Residential Tenancy Agreement. This shows the start of tenancy date was July 15, 2021 for a fixed term to July 15, 2022. The rent was \$1,800 at the start of the tenancy and did not increase. This rent was payable on the 30th of each month, for the following calendar month. A security deposit amount of \$900 was paid on July 11, 2021.

The tenancy agreement shows the Tenant agreed to pay 50% of utilities in their rental unit. This was an upper/lower unit arrangement as the Landlord described in the hearing.

The Landlord applied for an order of possession and rent/utilities payment pursuant to the 10-Day Notice issued to the Tenant on May 1, 2022. This was for the then-unpaid rent amount -- \$1,900 --- that was due on April 30, 2022. The extra \$100 was carried over as unpaid from March 30, 2022 for the April 2022 rent. The Tenant did not pay the entire amount for May 2022, by April 30, 2022. The Landlord served this to the Tenant

by serving it in person, for which they provided a Proof of Service document to show this was on May 1, at 12:00pm.

The Landlord also applied for an amended monetary order for \$2,286.82. This includes the utility amount owing from the Tenant, as requested from them by the Landlord in an email dated April 1, 2022. The Landlord provided a copy of the outstanding utility bill that was the basis for 50% of the utility owed. This amount appears on the 10-Day Notice.

Analysis

I have reviewed the copy of the tenancy agreement. In combination with the Landlord's oral testimony on its' terms and the conditions of how it was started with the Tenant, I am satisfied that the agreement existed and both parties knew the terms and conditions therein. Based on the testimony of the Landlord, and the proof of an agreement between the parties, I find the rent agreement was in place and clearly stated the amount and schedule for payment.

The *Act* s. 46 states a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Following this, s. 46(4) says that within 5 days after receiving a notice under this section, a tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

With s. 46(5), if a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), that tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit to which the notice relates by that date. In this case, the Tenant vacated the rental unit on May 31, 2022.

Based on the undisputed submissions by the Landlord here, I find they provided the 10-Day Notice attached to the door of the rental unit. The Tenant failed to pay the rent owing by May 6, within the five days after they received the 10-Day Notice directly from the Landlord. There is no evidence before me that the tenant disputed the 10 Day Notice within the five-day period.

I find that the tenant is obligated to pay \$2,286.82, as per the tenancy agreement and evidence in the form of notification and proof of the utility amount.

The *Act* s. 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by the Landlord. The Landlord has established a claim of \$2,286.82. After setting off the security deposit, there is a balance of \$1,386.82. I am authorizing the Landlord to keep the security deposit amount and award the balance of \$1,386.82 as compensation for rent and utility amounts owing.

Because the landlord was successful in their Application, I grant the \$100 Application filing fee award to them.

Conclusion

Pursuant to sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$1,486.82, for rent amounts owing, and recovery of the filing fee for this hearing application. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this 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 s. 9.1(1) of the *Act*.

Dated: August 22, 2022

Residential Tenancy Branch