



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This matter proceeded by way of an ex parte Direct Request Proceeding, pursuant to section 55(4) of the Residential Tenancy Act (the "Act"), and dealt with the landlords' Application for Dispute Resolution (Application) for:

- an Order of Possession for unpaid rent and utilities pursuant to sections 46 and 55 of the Act
- a Monetary Order for unpaid rent and utilities pursuant to section 67 of the Act (\$2,065.17)
- authorization to recover the filing fee for this application from the tenant pursuant to section 72 of the Act (\$100.00).

On December 1, 2022, the landlord's application was considered, and the adjudicator determined that it should be adjourned and reconvened as a participatory hearing, which was scheduled for April 4, 2023, at 11:00 am. The interim decision should be read in conjunction with this Decision as it made findings of service on the tenant.

On February 21, 2023, the Director determined that this matter should be brought forward to today's date March 15, 2023 at 11:00 am, due to the nature of the application. The Residential Tenancy Branch attempted to contact both parties and emailed both parties notification of the rescheduled hearing.

Only the landlord's appeared, gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

At the outset of the hearing the landlord indicated that the tenant vacated the rental unit in the middle of November 2022 and they no longer require an order of possession.

In this matter the landlords' amended their application to add other issues on March 1, 2023; however, I decline to hear the amended issues as the tenant was not served 14 days before the hearing. In this case the landlord served the tenant by the substituted service order of Messenger; however, it is not deemed received until the third day after it was sent, this would be March 4, 2023.

However, I am prepared to consider subsequent unpaid rent since the application was filed.

Issues to be Decided

Are the landlords entitled to a monetary order?

Background and Evidence

The tenancy began on December 17, 2021. Rent in the amount of \$1,800.00 was payable on the first of each month. A security deposit of \$900.00 and a pet damage deposit of \$900.00 were paid by the tenant.

The landlords testified that the tenant failed to pay rent for September 2022, in the amount of \$1,800.00 and failed to pay the outstanding utilities in the amount of \$265.17. The landlords stated that they served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") issued on September 5, 2022. Filed in evidence is a copy of the Notice.

The landlords stated that the tenant failed to pay the rent for September and failed to pay subsequent rent for October and November 2022. The landlords stated that the tenant left in the middle of November 2022 and due to the timing and condition they were not able to rent the premises for any portion of November 2022.

Analysis

Based on the above, the testimony, and evidence, and on a balance of probabilities, I find as follows:

The tenant has not paid the outstanding rent and did not apply to dispute the notice and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice. The tenant has vacated the rental unit and the landlords do not require an order of possession.

I accept the evidence of the landlords that the tenant failed to pay rent for September, October and November 2022. I find the tenant breached section 26 of the Act when they failed to pay rent due under the terms of their tenancy agreement. I find the landlord is entitled to recover unpaid rent for the above said months in the amount of **\$5,400.00**.

I further accept the evidence of the landlords that the tenant failed to pay the outstanding utilities listed in the Notice, I find the tenant breached the Act, when they failed to pay the utilities after they received written notice to pay. I find the landlord is entitled to recover the unpaid utilities listed in the Notice in the amount of **\$265.17**. The landlords are entitled to make a claim for subsequent unpaid utilities as I did not consider their amendment.

I find that the landlords have established a total monetary claim of \$5,765.17 comprised of unpaid rent, unpaid utilities and the \$100.00 fee paid by the landlords for this application.

I order that the landlords retain the security deposit of \$900.00 and the pet damage deposit of \$900.00 in partial satisfaction of the claim and I grant the landlords an order pursuant to section 67 of the Act, for the balance due of **\$3,965.17**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The tenant failed to pay rent and utilities and did not file to dispute the notice to end tenancy. The tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the notice to end tenancy.

The landlord does not require an order of possession as the tenant has vacated. The landlords are granted a monetary order and may keep the security deposit and pet damage deposit in partial satisfaction of the claim. I grant a monetary order for the balance due.

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 15, 2023

Residential Tenancy Branch