



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for unpaid rent and utilities and a Monetary Order for unpaid rent and utilities, and to recover the cost of the filing fee from the Tenant for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the Landlord, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Has the Tenant breached the *Residential Tenancy Act*, regulation and or tenancy agreement?
2. If so, has the Landlord met the burden of proof to obtain Orders pursuant sections 55 and 67 of the *Residential Tenancy Act* as a result of that breach?

Background and Evidence

The Landlord's Agent (the Agent) affirmed the parties entered into a tenancy agreement and the Tenant has occupied the rental unit since approximately May 1, 2011. Rent is payable on the first of each month in the amount of \$1,200.00 and on or before occupancy the Tenant paid \$600.00 as the security deposit.

The Tenant argued that she thinks she occupied the unit since April 2011 and that a few months ago the Landlord agreed to allow her to pay rent on the 5th of each month instead of the 1st of each month. She confirmed rent is \$1,200.00 per month and she did pay a security deposit of \$600.00.

The Agent referred to the documentary evidence which included, among other things, a copy of the 10 Day Notice that was served to the Tenant on September 7, 2011 by

posting it on the door, a copy of the Notice that was written upon and returned by the Tenant, and copies of receipts that were written by the Tenant and signed by the Landlord for rent payments.

The Agent stated that there is \$375.00 outstanding for August 2011, \$125.00 outstanding for September 2011 and \$375.00 outstanding for October 2011 for a total outstanding rent of \$875.00. The Agent confirmed there are outstanding utility costs to which the Tenant is responsible for 50% of natural gas and electricity. As of today's date they have received hydro bill for September which the Tenant owes \$222.48 and the natural gas bill due in October which the Tenant owes \$87.44 for total unpaid utilities of \$309.92. The Agent stated they wished to proceed with their application for an Order of Possession and a Monetary Order.

The Tenant confirmed there is outstanding rent due but she did not know the exact amount that was outstanding. She stated that she thinks it is approximately \$600.00. She made arrangements to have her sister be with her today so she could assist her in paying the outstanding balance in order to continue her tenancy.

The Agent stated that they were not interested in continuing this tenancy and wished to proceed with their application and requested that the monetary order be offset against the security deposit.

Analysis

I find that in order to justify payment of damages or losses under section 67 of the *Act*, the Applicant Landlord would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the Tenant.

Order of Possession. I find that the Landlord has met the requirements for the 10 day notice to end tenancy pursuant to section 46(1) of the *Act*, that the Tenant failed to pay the rent and the utilities in full within 5 days after receiving this notice, and that the 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 pursuant to section 46(5) of the *Act*.

As per the above, I approve the Landlord's request for an Order of Possession.

Claim for unpaid rent and utilities. The Landlord claims for unpaid rent of **\$875.00** (comprised of \$375.00 for Oct; plus \$125.00 for Sept; plus \$375.00 for August 2011), pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due.

The tenancy agreement provides that the Tenant is responsible for 50% of the cost of utilities. The 10 Day Notice supports the Landlords' demand for payment of the utilities in the amount of \$200.00 and since issuing the 10 Day Notice additional utilities has accumulated to **\$309.92** (\$222.48 for Sept Hydro plus \$87.44 for Oct natural gas bill) as supported by the documentary evidence.

The Tenant relied on her verbal testimony as her defense and was not able to provide a detailed account of the actual amounts outstanding. I therefore accept the Landlord's testimony which is supported by her documentary evidence. I find that the Tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly plus 50% of the utilities. Therefore I find the Landlord has proven the test for damage or loss under the *Act* and I hereby approve her claim of **\$1,184.92** (\$875.00 outstanding rent + \$309.92 utilities).

The Landlord has been successful with her application therefore I award recovery of the **\$50.00** filing fee.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

Unpaid Rent and Utilities	\$1,184.92
Filing Fee	<u>50.00</u>
SUBTOTAL	\$1,234.92
LESS: Security Deposit \$600.00 + Interest 0.00	<u>-600.00</u>
Offset amount due to the Landlord	<u>\$ 634.92</u>

Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenant**. This Order is legally binding and must be served on the Tenant.

A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$634.92**. This Order is legally binding and must be served on the Tenant.

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: October 19, 2011.

Residential Tenancy Branch