



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, FF, O

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord and her translator.

The landlord testified the tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by posting it on the rental unit door on July 18, 2013 in accordance with Section 89. As per Section 90, the documents are deemed received by the tenant on the 3rd day after it was posted.

Based on the testimony of the landlord, I find that the tenant has been sufficiently served with the documents pursuant to the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent and utilities; and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord testified the tenancy began on July 15, 2012 as a 1 year fixed term tenancy that converted to a month to month tenancy on July 15, 2013 for a monthly rent of \$1,400.00 due on the 15th of each month with a security deposit of \$700.00 paid. The landlord submits that while there is no clause that requires the tenant to pay the landlord for utilities it does stipulate that utilities are not included and that the utilities have remained in the landlord's name for the duration of the tenancy.

The landlord testified that she issued the tenant a 10 Day Notice to End Tenancy for Unpaid Rent in March 2013 and that since that time the tenant has made some small

payments towards both overdue utilities and rent, no copy of the 10 Day Notice was submitted into evidence. The landlord submits that she has not issued receipts for any of these payments that would indicate "for use and occupancy only".

The landlord testified the current rental arrears total \$5,500.00 and the unpaid utilities total \$400.00.

Analysis

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

While I accept the landlord may have issued a 10 Day Notice to End Tenancy in March 2013, I find the landlord has failed to provide a copy of that notice to this hearing and as such I cannot determine if the Notice is effective.

In addition, since the landlord testified that she issued the Notice in March 2013; has received payments from the tenant; and that she has not noted on any receipts that she does not wish to reinstate the tenancy, I dismiss the portion of the landlord's Application seeking an order of possession.

However, based on the undisputed testimony of the landlord I am satisfied the landlord is entitled to a monetary order for the amounts claimed for unpaid rent and utilities.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$5,950.00** comprised of \$5,500.00 rent owed; \$400.00 utilities owed and the \$50.00 fee paid by the landlord for this application.

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: August 20, 2013