



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant – CNR, RP, FF

For the landlords – OPR, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied to cancel a 10 Day Notice to End Tenancy for unpaid rent and utilities, for an Order for the landlord to make repairs to the unit, site or property and to recover the filing fee from the landlords for the cost of this application. The landlords applied for an Order of Possession for unpaid rent or utilities; for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlords to keep all or part of the tenant's security deposit; and to recover the filing fee from the tenant for the cost of this application.

Service of the hearing documents, by the landlords to the tenant, was done in accordance with section 89 of the *Act*; served in person on February 27, 2015. The landlord testified that the tenant did not serve hearing documents for the tenant's application upon the landlords.

The landlord KI appeared with an agent at the start of the hearing. The hearing was kept open for 10 minutes while we waited for the tenant to dial into the conference call. The tenant did not dial into the call during that time and the tenant's application was dismissed without leave to reapply. The hearing proceeded with the landlords' application. The tenant dialed into the conference call at 09:22 a.m. as the landlords' application concluded. I did not require the tenant to provide testimony concerning his application as the matter had been dismissed. The parties entered into dialogue

concerning the tenant's application and I have recorded the relevant dialogue in this decision.

Issue(s) to be Decided

- Are the landlords entitled to an Order of Possession for unpaid rent and utilities?
- Are the landlords entitled to a Monetary Order to recover unpaid rent and Utilities?
- Are the landlords permitted to keep all or part of the security deposit?

Background and Evidence

The landlord testified that this tenancy started on November 01, 2014 for a fixed term tenancy that is due to end on October 31, 2015. Rent for this unit was \$1,500.00 per month due on the 1st day of each month. The utilities were the responsibility of the tenant. The tenant paid a security deposit of \$750.00 on November 01, 2014.

The landlord testified that the tenant failed to pay rent for February, 2015. A 10 Day Notice to End Tenancy was served upon the tenant in person on February 06, 2015. This Notice informed the tenant that the rent of \$1,500.00 was outstanding for February. The Notice also informed the tenant that they had five days to pay the outstanding rent or file an application to dispute the Notice or the tenancy would end unit on February 14, 2015.

The landlord testified that the tenant did not pay the outstanding rent. Furthermore the tenant has not paid rent for March, 2015 of \$1,500.00. The landlord testified that the tenant may have moved from the unit but the tenant has sublet the unit without the landlords written permission and the person living in the unit has not paid any rent to the landlords. The total amount of outstanding rent is \$3,000.00.

The landlord testified that the City water bill is in the tenant's name; however, the landlord spoke to the City concerning this bill and was informed that it had not been paid by the tenant to an amount of \$277.24. This amount will be added to the landlords' property taxes. The landlord testified that the tenant has already received that bill but as it was not paid the City cut the water off to the property. The landlords have now had to have the water account put in their name to get the water service reinstalled. The landlords seek a Monetary Order to recover the rent and water bill from the tenant.

The landlord seeks an Order of Possession effective as soon as possible.

The landlord testified that they incurred costs to serve the tenant with the Notice and hearing documents as the landlord used the services of a bailiff. The landlords incurred the cost for this of \$99.75. The landlords seek to recover the costs to clean the unit at the end of the tenancy. The landlord testified that they have estimated this cost to be \$300.00. The landlords seek to recover additional costs for photocopying and faxing of documents of \$6.66.

The landlords seek to recover the \$50.00 filing fee from the tenant.

When the tenant joined the call I explained to the tenant that the hearing had just concluded and the tenant's application had been dismissed. I also explained to the tenant that I was satisfied that there is outstanding rent and utilities and even if the tenant had dialled into the call the outcome of the hearing would be the same. The tenant did not dispute that he withheld the rent and that there is an outstanding water bill.

The tenant stated that he still had belongings in the unit and was still in possession of the rental unit.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of the landlord. I refer the parties to s. 26 of the *Act* which states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I am satisfied that there is outstanding rent for February and March to the amount of **\$3,000.00**. The tenant is not entitled to withhold rent to force the landlord to make repairs to the rental unit. The tenant's recourse if repairs are required is to seek resolution by filing an application for dispute resolution. I therefore find in favor of the landlords' claim and award \$3,000.00 to the landlords pursuant to s. 67 of the *Act*.

I further find the tenant has not paid the final water bill and I am satisfied with the landlord's undisputed testimony that there is an outstanding amount of **\$277.24**. I therefore award this amount to the landlords pursuant to s. 67 of the *Act*.

The landlords have applied to keep the tenant's security deposit of \$750.00. I Order the landlords to retain the security deposit in partial satisfaction of the unpaid rent pursuant to s. 38 (4)(b) of the *Act*.

With regard to the landlord's claim for costs incurred to engage a bailiff to serve documents to the tenant. A landlord can serve a tenant by registered mail, in person and by posting a 10 Day Notice to the door. Any costs incurred by the landlords in choosing to serve the tenant using a bailiff must therefore be borne by the landlords. This section of the landlords' claim is therefore dismissed.

With regard to the landlords' claim for \$300.00 for a cleaning service; as the landlords have not incurred this cost at this time I am unable to award a cost based on speculation that the tenant will fail to leave the rental unit in a reasonable clean condition. This section of the landlords' claim is therefore dismissed.

With regard to the landlords' claim for photocopying and faxing of \$6.66; there is no provision under the *Act* for costs of this nature to be awarded. It falls under the premise of the cost of doing business as a landlord. This section of the landlords' claim is therefore dismissed.

As the landlords' claim has some merit, the landlords are entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*. The landlords will receive a Monetary Order for the balance owing as follows:

Outstanding rent	\$3,000.00
Outstanding utilities	\$277.24
Filing fee	\$50.00
Less security deposit	(-\$750.00)
Total amount due to the landlord	\$2,577.24

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. As this Notice was served in person on February 06, 2015 it was deemed served on that day. The effective date of the Notice is February 14, 2015. The tenant did not pay all the outstanding rent within five days and although the tenant did apply to dispute the Notice the tenant did not attend the hearing until after the time his application was dismissed and the hearing concluded and the tenant failed to serve his hearing documents to the landlord. In any event if the tenant had attended the hearing and had the tenant served the landlords in accordance with s. 89 of the *Act*, the outcome would remain the same as the tenant agreed he had withheld rent and utilities.

Based on the foregoing, I find that the tenant is conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the

Notice. As this date has since passed I grant the landlord an Order of Possession effective two days after service upon the tenant pursuant to s. 55 of the *Act*.

Conclusion

I HEREBY FIND in partial favor of the landlords' monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$2,577.24** pursuant to s. 67 and 72(1) of the *Act*. The Order must be served on the Respondent; if the Respondent fails to comply with this Order the Order is enforceable through the Provincial Court as an Order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlords, effective two (2) days after service. This Order must be served on the Respondent; if the respondent fails to comply with the Order, the Order may be filed in the Supreme Court and enforced as an Order of that Court.

The tenant's application is dismissed in its entirety without leave to reapply.

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 16, 2015

Residential Tenancy Branch

