



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPUM-DR, FFL

Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* (the “Act”) for an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”), for a Monetary Order for unpaid rent and/or utilities, and for the recovery of the filing fee paid for this application.

The Landlord originally filed under the Direct Request process, which was adjourned to a participatory hearing for clarity on the names of the parties.

The Landlord and the Tenant were both present for the duration of the hearing. The Landlord stated that she served the Tenant with the Notice of Dispute Resolution Proceeding package and copies of her evidence by posting on the Tenant’s door.

The Tenant confirmed receipt of the Notice of Dispute Resolution Proceeding package and the Landlord’s evidence and stated that the package was left on a chair in front of the door to the rental unit. The Tenant did not submit any evidence prior to the hearing.

Although the Landlord served the Notice of Dispute Resolution Proceeding package on the door, which is not a method of service under Section 89(1) of the *Act*, the Tenant confirmed that the documents were received. Therefore, pursuant to Section 71, I find that the documents were sufficiently served for the purposes of the *Act*.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Matters

During the hearing, the Tenant clarified that the other parties named as respondents are occupants in the rental unit, not tenants, which was confirmed by the tenancy agreement. Therefore, the names of the occupants were removed on the Application for Dispute Resolution to name only one tenant as the respondent. This amendment was made pursuant to Section 64(3)(c) of the *Act*.

The Landlord applied for unpaid rent for July, August and September 2018. However, during the hearing it was evident that the Landlord was also seeking monetary compensation for outstanding rent for October and November 2018.

As the Tenant is aware that rent is due each month as stated in the tenancy agreement and as required by the *Act*, I find that adding an additional two months to the monetary claim of the Landlord would not unfairly prejudice the Tenant. Therefore, the Application for Dispute Resolution was amended, pursuant to Section 64(3)(c) of the *Act* to add October and November 2018 rent to the Landlord's claim.

Issues to be Decided

Is the Landlord entitled to an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent?

Is the Landlord entitled to monetary compensation for unpaid rent and/or utilities?

Should the Landlord be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The Landlord provided testimony that the tenancy agreement was signed on July 31, 2017 and the Tenant moved in on August 14, 2016. Current monthly rent is \$1,400.00 and a security deposit of \$1,400.00 was paid at the outset of the tenancy. The Landlord stated that in September 2018, she put \$700.00 of the security deposit towards the rent

owing. Rent is due on the 13th of each month, but the Landlord said she has been accepting rent on the 20th of each month.

The Tenant stated that she moved in on August 14, 2018 and paid \$2,100.00 at that time, which she stated was a full month rent as well as half a month toward the security deposit. The Tenant submitted that current monthly rent is \$1,550.00.

The Landlord said the original arrangement was \$1,400.00 per month for rent, plus 25% of the utilities. However, as the utilities were estimated at \$150.00 per month, monthly rent is \$1,550.00 including utilities.

The tenancy agreement was submitted into evidence and states that the tenancy started on August 13, 2018 for a monthly rent amount of \$1,400.00. The agreement states that the security deposit was \$1,400.00 and that rent is due on the 13th day of each month.

On September 21, 2018, the Landlord served the Tenant in person with a 10 Day Notice. The Tenant stated that she found the 10 Day Notice on or around September 25, 2018 but was unsure of the exact date.

The 10 Day Notice was submitted into evidence and states that \$3,963.20 in rent was unpaid as due on September 20, 2018, and that \$160.00 for utilities was unpaid as due on July 20, 2018. The effective end of tenancy date of the 10 Day Notice was stated as September 30, 2018.

Initially only the first page of the 10 Day Notice was submitted into evidence, but the Landlord submitted the second page when this was brought to her attention through her application initial application to the Direct Request process.

The Tenant testified that she received a blurry photocopy of the first page of the 10 Day Notice only. The Landlord testified that she had both pages of the 10 Day Notice in front of her but stated that she did not know what pages she photocopied to serve to the Tenant.

The Landlord submitted a Direct Request Worksheet outlining the amount owed. The worksheet states that rent was unpaid for July, August, and September 2018 in the amount of \$1,400.00 per month. However, the Landlord stated that there had been a

previous overpayment of \$236.80 that she put towards July rent. The Landlord also put \$700.00 of the security deposit towards the rent owing for September 2018.

The worksheet also states that \$350.00 was unpaid as due on September 28, 2018, which the Landlord testified was for 7 days of rent up to the time she filed the Application for Dispute Resolution.

The worksheet states that the Landlord is owed \$160.00 towards utilities. The Landlord submitted two utility bills into evidence for gas and hydro. The gas bill was for \$243.85 and the hydro bill for \$395.50. The Landlord stated that the Tenant is responsible for 25% of these bills.

The Landlord also submitted a handwritten note which states that a total of \$2,723.00 is owed for rent and utilities. The Landlord provided testimony that this was a written demand for the Tenant to pay the outstanding rent and utilities. Although the note is undated, the Landlord testified that it was served to the Tenant in person on August 20, 2018.

The Tenant confirmed that she received the note regarding outstanding rent and utilities on or around August 20, 2018. She provided testimony that there was a time in the summer when the Landlord was away, and her family members would come to the rental unit to collect the rent money. She stated that she never received rent receipts and paid the Landlord's family members the rent for July and August 2018 in cash. The Tenant agreed that she did not pay rent for September, October or November 2018 as she was tired of accusations from the Landlord.

The Landlord stated that she sometimes provides receipts for rent paid in cash, but not all of the time. She agreed that her family members were collecting rent money while she was away and that this is when an overpayment of \$236.80 was received, which the Landlord put towards July 2018 rent.

Analysis

I refer to Section 52(e) of the *Act* which states that in order to be effective, a notice to end tenancy given by a landlord must be in the approved form. The approved form for the 10 Day Notice is 2 pages, with the second page providing information such as how to dispute the notice and how much time is allowed in which to do so.

As per rule 6.6 of the *Rules of Procedure*, the onus in a dispute resolution proceeding is on the party making the claim. As such, I find that the Landlord has the burden of proof to establish, on a balance of probabilities, that the notice was served as required. As the Landlord was unsure as to whether one or both pages of the 10 Day Notice were photocopied and served to the Tenant, I am not satisfied that the notice complies with Section 52 of the *Act*.

Therefore, I find that I cannot make a decision on the validity of the 10 Day Notice, and instead dismiss the Landlord's application for an Order of Possession, without leave to reapply.

As for the Landlord's claim for utilities, I refer to Section 46(6) of the *Act* which states that a 10 Day Notice may be given for unpaid utilities if the tenancy agreement states that utilities are paid to the landlord, and if unpaid more than 30 days after the landlord provides a written demand for payment.

Although the Landlord provided the Tenant with a written statement regarding the utilities owed, it is neither dated nor signed by the Landlord and does not include the rental unit address or the day which the utility payments were due. I also find that the statement is not clear as to how much the Tenant owes for utilities. Therefore, I decline to make any Monetary Orders for unpaid utilities, as I am not satisfied on the amount owing, or that the Tenant was aware of the amount due and provided a chance to pay.

As for the unpaid rent, the Landlord claimed unpaid rent for July, August, September, October and November 2018. The written statement from the Landlord notes \$1,400.00 due on the 13th day of each month, along with \$350.00 due on September 28, 2018 that the Landlord stated was for 7 days of rent into September.

The parties were not in agreement as to whether rent was paid for July and August 2018 but did agree that rent was not paid for September, October and November 2018.

Although the Landlord stated that she applied \$700.00 of the security deposit towards September 2018 rent, I find that the Tenant did not ask for permission to apply the security deposit towards rent owed in accordance with Section 21 of the *Act*. Pursuant to Section 19(2) of the *Act*, a security deposit cannot be more than one half a month's rent and any overpayments may be deducted from rent. However, the parties were not in agreement as to whether \$1,400.00 was paid for the security deposit or \$700.00.

Therefore, I make no determinations on whether there was an overpayment and do not apply any of the security deposit amount towards rent owing.

Due to the conflicting testimony between the parties, I find that the Landlord did not provide sufficient documentary evidence for me to be satisfied that July and August 2018 rent is unpaid. When parties to a dispute resolution proceeding provide conflicting testimony, it is up to the party with the onus to submit sufficient evidence over and above their testimony to establish their claim.

The Tenant claimed that rent for July and August 2018 was paid in cash to relatives of the Landlord with no receipt provided. I find insufficient documentary evidence from the Landlord to establish that rent is still unpaid for July and August 2018. Therefore, I decline to award the Landlord compensation for July and August 2018 rent.

In accordance with Section 26 of the *Act*, a tenant must pay rent when it is due as stated in the tenancy agreement. As the Tenant agreed that she did not pay rent for September, October and November 2018, pursuant to Section 67 of the *Act*, I find that the Landlord is owed \$1,400.00 for each of these three months.

Through the evidence and testimony of both parties, it was not clear as to why the Landlord noted an additional charge of \$350.00 due on September 28, 2018 when rent is due on the 13th day of each month. Therefore, I am not satisfied that the Landlord is owed an additional \$350.00 for September 2018 and decline to award this amount.

The Tenant is cautioned that rent must be paid as due in accordance with Section 26 of the *Act*. Should rent be owing and unpaid as due for future rent payments, the Landlord may find cause to serve a 10 Day Notice pursuant to Section 46 of the *Act*.

As the Landlord was partially successful with the Application for Dispute Resolution, I award the recovery of the filing fee in the amount of \$100.00, pursuant to Section 72 of the *Act*. The Landlord is granted a Monetary Order in the amount outlined below:

September 2018 rent	\$1,400.00
October 2018 rent	\$1,400.00
November 2018 rent	\$1,400.00
Recovery of filing fee	\$100.00
Total owing to Landlord	\$4,300.00

Conclusion

The Landlord's application for an Order of Possession is dismissed, without leave to reapply.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a **Monetary Order** in the amount of **\$4,300.00** for rent owed for September, October and November 2018, as well as for the recovery of the filing fee for this 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 22, 2018

Residential Tenancy Branch