



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPUM-DR, FFL

Introduction

This hearing dealt with the adjourned Direct Request Application by the Landlords filed under the Residential Tenancy Act (the “*Act*”), for an order of possession to enforce a 10-Day Notice for Unpaid Rent (the Notice) issued on October 4, 2018, a Monetary Order for unpaid rent and utilities, and to recover the filing fee paid for this application. The matter was set for a conference call.

One of the Landlords attended the hearing and was affirmed to be truthful in his testimony. As the Tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered. Section 59 of the *Act* states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that he served the Tenant with the Notice of Hearing documents by Canada Post Registered mail, sent on October 17, 2018, a Canada post tracking number was provided as evidence of service. I find that the Tenant had been duly served with the Notice of Hearing in accordance with the *Act*.

The Landlord was provided with the opportunity to present his evidence orally and in written and documentary form, and to make submissions at the hearing.

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

Issues to be Decided

- Are the Landlords entitled to an order of possession pursuant to section 46 of the Act?
- Are the Landlords entitled to a monetary order for unpaid rent and utilities?
- Are the Landlords entitled to the return of their filing fee?

Background and Evidence

The Landlord testified that the tenancy began on April 1, 2018, as a month to month tenancy; rent in the amount of \$1,200.00 and utilities in the amount of \$180.00 is to be paid by the first day of each month. The Landlord also testified that the Tenant had paid a \$600.00 security deposit at the outset of this tenancy. The Landlord provided a copy of the tenancy agreement into documentary evidence.

The Landlord testified that he served the Tenant with the Notice to End Tenancy by posting it to the front door of the rental unit on October 4, 2018. The Notice informed the Tenant of the right to dispute the Notice or pay the outstanding rent and utilities within five days after receiving it. The Notice also informed the Tenant that if an application to dispute the Notice or payment of the outstanding rent and utilities in full is not made within five days, the Tenant is presumed to have accepted the Notice and must move out of the rental unit on the date set out on page one of the Notice. The Landlord provided a copy of the Notice into documentary evidence.

The Landlord testified that the Tenant has not paid the rent and utilities as indicated on the Notice and that the rent and utilities are currently outstanding for September, October, and November 2018. The Landlord provided two copies of unpaid utility bills into documentary evidence.

The Landlord also testified that the Tenant has moved out of the rental unit and that he no longer requires an order of possession. The Landlord testified that he does require a Monetary Ordre for the outstanding rent and utilities.

Analysis

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

Section 46 of the *Act* requires that upon receipt of a Notice to End Tenancy for Non-payment of Rent a tenant must, within five days, either pay the amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do either of these things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice under section 46(5).

Landlord's notice: non-payment of rent

- 46** (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.
- (2) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.
- (3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.
- (4) Within 5 days after receiving a notice under this section, the tenant may
- (a) pay the overdue rent, in which case the notice has no effect,
 - or
 - (b) dispute the notice by making an application for dispute resolution.
- (5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant
- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
 - (b) must vacate the rental unit to which the notice relates by that date.

I find that the Tenant was deemed to have received the Notice on October 7, 2018, three days after it was posted to the front door of the rental unit, pursuant to section 90 of the *Act*.

I accept the undisputed testimony of the Landlord that the Tenant had moved out of the rental unit in accordance with the Notice and that the Tenant has not paid the outstanding rent and utilities as indicated on the Notice.

I find that the Landlords have established an entitlement to a monetary award for three months of rent for September, October and November 2018, in the amount of \$3,60.00. I also authorized the Landlord to retain the Tenant's \$600.00 security deposit in partial satisfaction of this award.

I have reviewed the tenancy agreement submitted into documentary evidence, and I find that section three of the tenancy agreement shows that the parties to this dispute had agreed that the utilities for the rental unit were included in the rent. Therefore, I dismiss the Landlords' claim to recover \$692.55 in unpaid utilities for this tenancy.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlords have been partially successful in their application, I find that the Landlords are entitled to recover the \$100.00 filing fee paid for their application.

Conclusion

I grant the Landlords a **Monetary Order** in the amount of **\$3,100.00**. The Landlords are 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