



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPUM, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid utilities - Section 67;
2. An Order for Possession - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant did not attend the hearing. I accept the Landlord’s evidence that the Tenant was served with the application for dispute resolution and notice of hearing (the “Materials”) in person on November 2, 2017 in accordance with Section 89 of the Act. The Landlords were given full opportunity to be heard, to present evidence and to make submissions. The Landlord confirms that the Tenant moved out of the unit on January 3, 2018. As the tenancy has ended I find that the Landlord no longer requires an order of possession and I dismiss that claim.

Issue(s) to be Decided

Is the Landlord entitled to unpaid rent?

Is the Landlord entitled to recovery of the filing fee?

Relevant Background and Evidence

The tenancy, under written agreement, started on July 1, 2014. The current Landlord took over the unit in December 2016. There was no change to the tenancy agreement

when the new Landlord took over. Rent of \$500.00 was payable on the first day of each month. The tenancy agreement does not indicate that utilities are included in the rent. There is nothing in the agreement or an addendum that sets out any details requiring the Tenant to pay any amount of any utility to any person. The Landlord states that they have no records of the payment of utilities by this Tenant from the previous landlord and that since taking over as Landlord the Tenant has not paid any utilities. The Landlord states that the Landlord started to charge the Tenant for utilities since May 2017 and submits that from this time forward the Tenant owes 25% of the hydro and gas consumption and 50% of the water and sewer consumption for a house containing two units in addition to the Tenant's unit. On July 6, 2017 the Landlord served the Tenant with a written demand letter for the payment of the utilities and on September 14, 2017 served the Tenant with a 10 day notice to end tenancy for unpaid utilities. The Landlord claims the unpaid utilities. The Landlord provides a copy of the tenancy agreement.

Analysis

Section 46(6) of the Act provides that if, inter alia, a tenancy agreement requires the tenant to pay utility charges to the landlord, the landlord may treat the unpaid utility charges as unpaid rent and may give notice to end the tenancy under the section of the Act dealing with unpaid rent. Section 6(3) of the Act provides that a term of a tenancy agreement is not enforceable if, inter alia, the term is not expressed in a manner that clearly communicates the rights and obligations under it. Although the tenancy agreement does not include utilities as part of the rent, as there is nothing indicating what utilities are payable and what percentage of those utilities are payable or to whom the utilities would be payable to, I find that there is no requirement in the tenancy agreement and no clear expression of the obligation to pay any utilities to the Landlord. Further the Landlord has not provided any evidence that the Tenant agreed in writing to amend the written tenancy agreement. The Landlord has therefore not substantiated any entitlement to the payment of utilities from the Tenant and I dismiss the claim. As there was no basis to end the tenancy I find that the Landlord's application had no merit

and I decline to award recovery of the filing fee. In effect the application is dismissed in its entirety.

It is noted that after giving its evidence and after waiting 10 minutes from the scheduled hearing time to allow the Tenant to appear, oral reasons for the outcome of the Decision was provided to the Landlord following which the Landlord continued to argue its right to collect utilities from the Tenant. The Landlord made no reference to the application of any laws in its continuing argument and presented no additional evidence that would change the outcome of this Decision. The hearing was therefore concluded.

Conclusion

The Landlord's application is dismissed.

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: January 25, 2018

Residential Tenancy Branch