



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

MNR MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for based on the Notice to End Tenancy for Unpaid Rent and the Dispute Resolution decision rendered on December 3, 2008 in which the landlord was granted an order of possession based on rent owed but unpaid by the tenant. The landlord is now seeking a monetary order for rent owed and an order to retain the security deposit in partial satisfaction of the claim.

Both the landlord and the tenant appeared and gave testimony.

Issue(s) to be Decided

The landlord is seeking a monetary order claiming unpaid rent of \$1,325.00 each month for the months of November 2008 and December 2008 and accrued gas utilities of \$357.76 owed by the tenant.

The issues to be determined based on the testimony and the evidence are:

Whether or not the landlord is entitled to monetary compensation for rental arrears owed and loss of rent for November and December 2008 totaling \$2,650.00

Whether or not the landlord is entitled to utility costs \$357.76

Background and Evidence

The landlord submitted into evidence a copy of a Dispute Resolution decision dated December 3, 2009 which dealt with the tenant's previous application to cancel a Ten-Day Notice to End Tenancy for Unpaid Rent dated November 7, 2008 and a Two-Month Notice to End Tenancy for Landlord's Use dated November 7, 2008. The tenant was not successful and the Dispute Resolution Officer found that the tenant did not pay rent owed, that the Ten-Day Notice was valid and an Order of Possession was issued in favour of the landlord effective December 15, 2008. As the Ten-Day Notice was upheld, the Dispute Resolution Officer indicated in the decision that she did not consider the Two-Month Notice to End Tenancy for Landlord's Use dated November 7, 2008 and the written decision made no findings on that matter.

The landlord testified that the tenant failed to pay \$1,325.00 rent for the month of November 2008 and \$1,325.00 rent for the month of December 2008 and because the tenancy was validly ended on that basis, the landlord's position is that the landlord is entitled to compensation for rent owed for both months. In regards to the Two-Month Notice for Landlord's Use, the landlord testified that this notice was withdrawn and should not impact the landlord's claims.

On the topic of utilities, the landlord stated that the tenant was responsible to pay the gas bill as agreed-upon at the start of the tenancy. No copy of the tenancy agreement was in evidence. The landlord testified that the gas account was originally placed in the tenant's name as agreed, but due to problems with past arrears left by previous tenants the gas company required that the account revert back into the landlord's name. However, the tenant was still responsible to pay the account. The landlord submitted a copy of the invoice into evidence showing the account was in the landlord's name and that \$357.76 was owing.

The landlord testified that the tenant the Order of Possession required the tenant to vacate by December 15, 2008 but that the tenant did not respond to the landlord's request for a move-out inspection and did not return the keys. The

landlord testified that the landlord didn't actually take possession until December 28, 2008. The landlord testified that the tenant finally returned the keys along with a written forwarding address on January 25, 2009. The landlord submitted a copy of this communication from the tenant into evidence.

The tenant testified that the tenant received both notices to end the tenancy and conceded that the tenancy was ended pursuant to the Ten-Day Notice because the tenant failed to pay rent for the month of November, having mistakenly believed that the rent could be withheld due to deficiencies in the rental unit and the landlord's failure to comply with the Act in that regard. The tenant testified that, however, the tenant was entitled to the equivalent of one month rent pursuant to the Two-Month Notice to End Tenancy for Landlord's Use. The tenant's position was that no rent was owed for the month of November 2008. The tenant testified that the tenant vacated the unit the day after the previous hearing and was gone by December 4, 2008. The tenant's position was that no rent should be owed for the month of December either, although the tenant did not offer a clear explanation the basis of that conclusion.

In regards to the utilities owed, the tenant disputed the amount being claimed. The tenant testified that the gas was put into the tenant's name as agreed and the tenant paid for the first month of August 2008. The tenant testified that the tenant had complained to the landlord about the fact that the wood-burning fireplace was not functional despite representations by the landlord at the time the tenancy started that the fireplace would supplement the heating costs. The tenant had objected to paying a higher-than-expected gas bill in excess of the \$50.00 expected for heating the unit. The tenant testified that when the landlord placed the gas utilities in the landlord's name the tenant had been willing to pay \$50.00 per month to the landlord for the bill and the tenant feels that the utility arrears should be \$200.00, not \$357.76.

In regards to the return of the keys and forwarding address, the tenant testified that a forwarding address was given to the landlord by email shortly after the

tenancy ended and there were communications with the landlord trying to make arrangements for the return of the keys.

Analysis

A landlord or tenant cannot unilaterally withdraw a Notice to End Tenancy except with the consent of the party to whom it is given. Also, issuing of a second Notice to End Tenancy does not operate as a waiver of a Notice already given. In other words, the landlord is not at liberty under the Act to merely “withdraw” the Two-Month Notice to End Tenancy for Landlord Use.

Section 49.1(3) of the Act states that a landlord can end a tenancy for landlord’s use on a date that is not earlier than 2 months after the date the notice is received, and falls on the day before the day in the month that rent is due. The Two-Month Notice issued on November 7, 2008 could not be effective before January 31, 2009. I find that, section 51 (1) of the Act states that tenant who receives a notice to end a tenancy under section 49, [landlord’s use of property], is entitled to receive from the landlord on or before the effective date of the landlord’s notice an amount that is the equivalent of one month’s rent payable under the tenancy agreement.

I find that the fact that the tenancy ended for other valid reasons does not serve to extinguish the tenant’s entitlement to be credited with the equivalent of one month rent in compensation under section 51 of the Act.

Section 50 of the Act does allow a tenant who has received a Two-Month Notice for Landlord’s Use to vacate any time after the Notice has been received with only ten days written notice to the landlord and the Act also provides that this tenant would then only be required to pay pro-rated rent for the days that the tenant occupied the unit during the month. This would not affect the tenant’s entitlement to the equivalent of one-month rent in addition. In this instance the tenant stated that the tenant had only resided in the unit for a portion of the month of December 2008. However, I find that section 50 does not apply to the circumstances in the case before me. I find that, in fact, the effective date for

ending the tenancy given on the Ten-Day Notice to End Tenancy for Unpaid Rent issued November 7, 2008, had been found to be valid in the previous Dispute Resolution Decision and therefore, I find that the tenant was over-holding by remaining in the unit well beyond the effective date on the Ten-Day Notice.

I find that the tenant was responsible to pay \$1,325.00 rent for the month of November 2008. Because the tenant continued the tenancy into December, I find the tenant also owed \$1,325.00 rent of the month of December, properly due December 1, 2008. However, I find that, pursuant to the Two-Month Notice issued by the landlord under section 49 of the Act, the landlord was required to credit the tenant with the equivalent of one-month rent in the amount of \$1,325.00 allocated towards the final month of the tenancy, December 2008.

In regards to the utilities owed, I find that the landlord is entitled to compensation in the amount of \$200.00.

I find that the landlord has established a total monetary claim of \$1,575.00 comprised of \$1,325.00 rental arrears for the month of November 2008, \$200.00 for utilities and the \$50.00 fee paid by the landlord for this application. I order that the landlord retain the security deposit and interest of \$666.65 in partial satisfaction of the claim leaving a balance due of \$908.35.

Conclusion

I hereby grant the Landlord an order under section 67 for \$908.35. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

March 2009

Date of Decision

Dispute Resolution Officer