

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing was convened by way of conference call to deal with the landlords' application for an Order of Possession for unpaid rent or utilities, and for a monetary order for unpaid rent or utilities, and to recover the filing fee from the tenant for the cost of this application.

Both parties appeared, gave affirmed evidence and were given the opportunity to cross examine each other on their evidence.

Issues(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent?

Are the landlords entitled to a monetary order for unpaid rent?

Background and Evidence

This month-to-month tenancy began on May 28, 2009, and the tenant still resides in the unit. Rent in the amount of \$650.00 is payable on the 1st day of each month. On June 1, 2009, the tenant paid a security deposit in the amount of \$325.00. The landlord testified that the tenant is also responsible for paying \$111.00 per month for natural gas and \$75.00 every 2 months for hydro. The tenancy agreement, a copy of which was provided as evidence in advance of the hearing, shows that there is a 1 page addendum with 2 terms in the addendum. The addendum attached to the copy of the tenancy agreement shows 3 terms, and no signatures of the parties. It states that

- Tenant agrees to reimburse the landlord for gas charges \$111.00/month equal payment plan.
- Tenant agrees to reimburse the landlord for electric charges \$90.00 every two months.

- Tenant agrees if utility charges increase the extra charges will be paid to the landlord.

The tenant testified that he does agree with the addendum, even though he did not sign it. He further testified that the parties agreed to round off the rental and utility amounts to \$800.00 per month, and he never had a problem with it. However, if rent was late, he would give the landlord more and sometimes the utilities would be more. It was always done on a hand shake.

The landlord testified that the tenant owes \$1,500.00 for rent and utilities, being \$800.00 for February, and \$800.00 for March, and there is now due another \$800.00 for April, 2010. The total claim of the landlords today is \$2,300.00.

On January 18, 2010, the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, which shows that the tenant is expected to move out on January 28, 2010. It further shows that the tenant failed to pay rent in the amount of \$650.00 and utilities in the amount of \$150.00 that were both due on January 1, 2010. The tenant testified that he got the notice on the 18th of January, and took it back to the landlord. He stated that he does not disagree with the amount, but disagrees with the letter that accompanied the notice.

The landlord testified that he personally served the tenant, and then the tenant phoned him on January 21, 2010 stating he had found a job but didn't know when he'd get paid. The tenant called the landlord again on January 24, 2010 and said he'd be paid on February 15, 2010 and asked if the landlord would wait for the \$1,600.00 owing, and the landlord agreed to that. On February 16, 2010, the tenant gave the landlord \$900.00 and promised to pay the outstanding rent and rent for the next month on March 5, 2010. The landlord called the tenant on or about March 11, 2010 and testified that the tenant swore at him. The landlord applied for dispute resolution on March 8, 2010, and sent a registered letter with the notice of hearing documents.

The tenant testified that there were verbal agreements between the parties, and that he never refused to pay. On March 5, 2010, he was working in a camp, which is why he

did not pay the amounts promised on that date. He stated that during the conversation they had on January 21, 2010, the landlord said he would work with him. The tenant testified that he always paid in cash and never got a receipt. He also denies having swore at the landlord.

Analysis

The first problem with this dispute is that the parties made verbal agreements, handshake deals and nothing in writing, except a somewhat faulty tenancy agreement and a notice to end tenancy. The evidence also shows that the parties “rounded off” the rent and utilities owing to \$800.00 per month, although the agreement does not say that. The landlord states that the tenant owes \$2,300.00 in unpaid rent and utilities, but has failed to establish exact amounts. Further, the landlord testified that the hydro cost is \$75.00 every 2 months, yet the tenancy agreement shows \$90.00 for 2 months. In my analysis, given the evidence provided, the landlord was owed \$650.00 for February’s rent, plus \$111.00 for natural gas and \$37.50 for hydro. The total monthly amount in accordance with the landlord’s evidence is \$798.50 or, \$806.00 if the tenancy agreement were followed. However, the tenant stated that he did not disagree with the amounts claimed by the landlord. Therefore, I find that the tenant owed \$3,200.00 for \$800.00 in rent and utilities combined for each of the months of January to April inclusive, and paid \$900.00, leaving a balance outstanding of \$2,300.00.

The next issue is with respect to rental payments being made in cash. The *Residential Tenancy Act* specifically states that the landlord is required to issue a receipt for rent paid in cash. The landlord issued the notice to end tenancy on January 18, 2010, and then accepted rent on February 16, 2010 and did not issue a receipt that specifically stated “for use and occupancy only” and has therefore reinstated the tenancy. For that reason, I decline to issue an Order of Possession, and the notice to end tenancy must be cancelled.

Conclusion

For the reasons set out above, the landlord's application for an Order of Possession for unpaid rent or utilities is hereby dismissed.

The landlord's application for a monetary order for unpaid rent and utilities is hereby awarded at \$2,300.00, which includes all rent and utilities owing to date up to the end of April, 2010.

Since the landlord has been partially successful with his claim, I also order that the landlord recover the filing fee in the amount of \$50.00 from the tenant for the cost of this application.

This order may be filed in 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: April 28, 2010.

Dispute Resolution Officer