

DECISION

Dispute Codes

OPR, MNR, MNSD, MNDC, FF

Introduction

This is the Landlord's application for an Order of Possess, a Monetary Order for unpaid utilities and compensation for damage or loss; to retain the security deposit in satisfaction of its monetary award; and to recover the cost of the filing fee from the Tenants.

The Landlord's agent signed into the teleconference and gave affirmed testimony.

Background and Evidence

The Landlord provided a copy of the tenancy agreement in evidence, which indicates that the Tenants were required to pay a security deposit in the amount of \$497.50 on August 6, 2009.

The Landlord provided a copy of an agreement, dated August 16, 2009, whereby the Tenants agreed to be responsible to pay the gas bill at the rental unit and to have the gas bill transferred to their names.

The Landlord provided a copy of the Notice to End Tenancy issued March 1, 2010, in evidence. The Notice alleges that the Tenants failed to pay utilities in the amount of \$272.97 following written demand on March 1, 2010. The Landlord's agent testified that she gave the Tenants notice of the overdue utilities on February 2, 2010.

The Landlord's agent testified that the Tenants were served with the Notice to End Tenancy on March 1, 2010, by posting the Notice on the door at the rental unit.

The Landlord's agent testified that the Tenants were served with the Notice of Hearing documents on March 20, 2010, by personal service at the rental unit.

The Landlord's agent testified that the Tenants paid the outstanding gas bill in full on April 7, 2010.

Analysis

I accept the Landlord's evidence that the Tenants were personally served with the Notice of Hearing documents on March 20, 2010. Despite being served, the Tenants did not sign into the teleconference, and the Hearing proceeded in their absence.

If a tenant is required to pay utilities under a tenancy agreement, Section 46(6) of the Act provides that a landlord may treat unpaid utilities as unpaid rent and issue a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, **if the utility charges remain unpaid more than 30 days after the tenant is given a written demand to pay the utilities.** In this case, the Notice states that the Tenants were provided with written demand on the same day that the Notice was issued (March 1, 2010). The Landlord's agent testified that she gave notice to the Tenants regarding the outstanding utilities on February 2, 2010. Whether the Landlord gave the Tenants notice on February 2, 2010 or on March 1, 2010, the Tenants were not provided with 30 days to pay the utilities before the Notice was issued. The Notice to End Tenancy is therefore cancelled and is of no effect. In any event, the Landlord's agent testified that the utilities were paid in full by the Tenants on April 7, 2010. Therefore, the Landlord is not entitled to an Order of Possession, or a Monetary Order.

The Landlord has not been successful in its application and is not entitled to recover the cost of the filing fee from the Tenants.

Conclusion

The Landlord's application is dismissed in its entirety. The Notice to End Tenancy issued on March 1, 2010, is cancelled. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

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: May 17, 2010