

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This matter dealt with an application by the landlord for an Order of Possession, a Monetary Order for unpaid utilities and to recover the filing fee for this proceeding

Service of the hearing documents was done in accordance with section 89 of the *Act*. They were sent to the tenant by registered mail on August 20, 2010. The tenant confirmed he had received them.

Both parties appeared, gave their testimony, were provided the opportunity to present evidence, make submissions and to cross-examine the other party. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Is the landlord entitled to an Order of Possession?
- Is the landlord entitled to a Monetary Order to recover unpaid utilities?

Background and Evidence

Both Parties agree that this tenancy started on April 01, 2010. The tenant had been an occupant previously and took over the tenancy when the other tenant vacated the rental unit. There are two other occupants residing at the rental unit with the tenant. The monthly rent for this unit is \$1,350.00 which is due on the first of each month. The tenant paid a security deposit of \$675.00 on April 01, 2010.

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The landlord testifies that the tenant was given two 30 day notices to pay the utility bills, one on May 10, 2010 and one on June 11, 2010. The landlord states the tenant paid \$300.00 on May 14, 2010 and \$200.00 mid August, 2010. The landlord served the tenant with a 10 Day Notice to End Tenancy due to unpaid utilities. This Notice was served to the tenant in person on August 10, 2010 with an effective date to end tenancy as of August 20, 2010 due to 682.40 arrears after receiving written demand for payment. The notice also states it will be cancelled if the landlord receives \$812.86 within five days of the tenant receiving the Notice.

The landlord seeks an Order of Possession because he states the tenant has not paid the due amount of arrears and seeks to recover his filing fee from the tenant.

The tenant states that some of the utility arrears were in place before his tenancy started as prior to this he was just an occupant and his share of rent included utilities. The tenant agrees that he is responsible for the utilities from March 24, 2010 after the original tenant moved out despite the fact his tenancy did not commence until April 01, 2010. The tenant states that the landlord kept giving him demands to pay the utilities but there was confusion as to how much he owed. The tenant agrees that he stopped paying the utilities in August because he was waiting for this hearing to take place to determine what he actually owed the landlord as the figures given on the 10 Day Notice were conflicting.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. I find the tenant is not responsible for utilities owed when he was just an occupant of the rental unit. Where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the tenancy agreement, unless all parties enter into a new tenancy agreement to include the occupant as a tenant pursuant to #13 of the Residential Tenancy Policy Guidelines.

Therefore, I find the tenant is not responsible for utilities until his tenancy started on April 01, 2010. The tenant however does agree that as the old tenant moved out on March 24, 2010 and

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the date the meters were read was around this date that he will assume responsibility for utilities from March 23, 2010. Consequently I find the tenant owed utilities of:

\$267.63 from March 23 to April 15

\$156.65 from April 15 to May 14

The tenant paid a sum of \$300.00 on May 14, 2010 which left a balance owing of \$124.28.

The tenant owes utilities of:

\$154.68 for May 14 to July 15

\$130.46 for July 15 to August 16

The tenant paid \$200.00 mid August, 2010 which leaves a balance owing of \$209.42.

Therefore the amount owed by the tenant when he received the 10 Day Notice on August 10, 2010 was in fact \$209.42 not either \$682.40 or \$812.86 as documented on the 10 Day Notice. As the landlord has not documented the correct amount of outstanding utilities I find the Notice to be invalid and the landlords' application for an Order of Possession is dismissed.

The tenant agrees that he now also owes utilities of:

\$132.81 for August 16 to September 15.

I find the landlord is entitled to a monetary award to recover unpaid utilities of **\$342.23** pursuant to s. 67 of the Act.

As the landlord has been partially successful with his claim I find he may recover half his filing fee from the tenant to the sum of **\$25.00** pursuant to s. 72(1) of the Act.

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Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$367.23**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

The landlords' application for an Order of Possession is dismissed. The 10 day Notice issued on August 10, 2010 is cancelled.

The landlord is at liberty to issue a new 10 Day Notice to End Tenancy in the event the tenant does not pay the outstanding utilities.

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: October 07, 2010.

Dispute Resolution Officer