

Decision

Dispute Codes:

OPR, MNR, MNSD, FF

Introduction

This is an application for an order of possession based on the Ten Day Notice to End Tenancy for Unpaid Rent dated February 11, 2011 and for monetary compensation for rental arrears and utilities owed to the landlord by the tenant.

Both parties appeared and gave testimony.

At the outset of the hearing the landlord advised that the tenants had vacated in mid-February 2011 without giving a forwarding address. Therefore I find that the portion of the landlord's application relating to the request for an Order of Possession is now moot.

Issue(s) to be Decided

The remaining issue to be determined, based on the testimony and evidence, is whether or not the landlord is entitled to monetary compensation for rental arrears and utilities owed.

Background and Evidence

The tenancy began without a written tenancy agreement in November 2010 and ended on February 15, 2011. Rent was set at \$1,000.00 per month plus hydro utilities. The hydro was in the landlord's name but the tenant's cost of hydro was based on a reading of the main electrical meter located in the tenant's unit, minus the usage readings shown on privately installed auxiliary meters located at the landlord's unit and a rental cabin on the property. Apparently the landlord and tenant were required to simultaneously record the different meter readings at a particular point in time in order to calculate the reciprocal costs based on consumption at the current rate charged as set by the utility company. The billings from the hydro provider would arrive every two months, and the expectation was that the tenant would pay the applicable portion for their own usage without delay.

The landlord testified that the hydro used during the tenancy was extremely high and the tenant fell into arrears with the utilities. The landlord testified that when she approached the tenant for payment, she was met with hostility. The landlord testified that on February 1, 2011 the tenant failed to pay the \$1,000.00 rent or any of the outstanding utilities owed and the landlord had therefore issued a Ten Day Notice to End Tenancy for Unpaid Rent on February 2, 2011. The landlord testified that the tenant never paid the arrears and did not file to dispute the Ten-Day Notice. The landlord testified that the tenant moved out on February 15, 2011. The landlord was claiming a total of \$1,912.35 for rent, utilities and the \$50.00 cost of filing the application. The landlord had also incurred some cleaning costs of \$88.00.

The tenant testified that the landlord's method of calculating utilities was confusing and appeared to be flawed. The tenant stated that the landlord has assured them at the start of the tenancy that the hydro bills were estimated to fall between \$100.00 per month and \$150.00 per month, depending on whether or not they used firewood for heat. The tenant stated that they did heat with the firewood, and were shocked to receive the landlord's final calculation for the utilities owed. The tenant stated that they requested to see the utility company invoice but were never provided with a copy. The tenant stated that, during the tenancy the landlord was bothersome, intrusive and inappropriately approached their family members to discuss tenancy matters. The tenant acknowledged that rent for February was left unpaid. The tenant stated that they felt they had no choice but to vacate the unit without delay because of the situation.

Analysis

With respect to rent owed, I find section 26 of the Act states that rent must be paid when it is due, under a tenancy agreement. I find that the tenant owed \$1,000.00 in rent.

With respect to the accrued utility arrears, I find that section 46(6) of the Act states that unpaid utilities can be considered as rental arrears if a tenancy agreement requires the tenant to pay utility charges to the landlord, and the utilities remain unpaid more than 30 days after the tenant receives a written demand for payment. If the above conditions are met, unpaid utility charges are considered as unpaid rent and used as a basis to give notice.

I find in this tenancy relationship there was no written term in a tenancy agreement that explained how hydro utility payments were to be calculated and billed by the landlord. I also find that, the manner of invoicing used to charge for the hydro was complicated and required manual readings to be done by the tenant and the landlord at specific times. I find that this method of collection is prone to being misunderstood. That being said, I find that the tenant was aware that utilities were not included in the rent and would be owed.

Accordingly, I find that the tenant is required to reimburse the landlord at the rate of \$150.00 per month for 3.5 months for a total of \$525.00 in hydro costs owed to the landlord.

I find that the landlord is entitled to total monetary compensation of \$1,575.00 comprised of \$1,000.00 rent for February, \$525.00 hydro costs and the \$50.00 cost of filing the application. The landlord will retain the tenant's security deposit of \$500.00 in partial satisfaction of the claim leaving \$1,075.00 still owed to the landlord.

Conclusion

I hereby grant the Landlord an order under section 67 for \$1,075.00. 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.

The remainder of the landlord's application is dismissed without leave.

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: February 2011.

Residential Tenancy Branch