



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPC OPB MNR CNC RP LRE LAT FF O

Introduction

This hearing dealt with applications by the tenants and the landlord. One tenant, a witness for the tenant and both landlords all participated in the teleconference hearing.

The tenants applied to cancel a notice to end tenancy for cause, as well as for orders for repairs, an order setting conditions on the landlord's right to enter the rental unit, and an order authorizing the tenant to change the locks. At the outset of the hearing the tenant acknowledged that she was in the process of moving out, and on that basis I dismissed the portions of her application regarding repairs and orders regarding locks and the landlord's right to enter the unit.

The tenants also requested an amendment of their application to include a monetary order for reimbursement for utilities as per the tenancy agreement. The landlord did not object to this amendment, and I therefore added the tenants' application regarding reimbursement for utilities.

The landlord applied for an order of possession and a monetary order for unpaid rent.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the landlord entitled to the monetary amount claimed for unpaid rent?

Is the tenant entitled to the monetary amount claimed for reimbursement of utilities?

Background and Evidence

The tenancy began on August 15, 2010, with monthly rent in the amount of \$1075.

On February 24, 2011, the landlord served the tenants with a notice to end tenancy for cause. The notice cites the following reason for ending the tenancy: "breach of a material term of the tenancy agreement that was not corrected within a reasonable time

after written notice to do so.” The landlord did not submit a copy of the tenancy agreement. In the hearing, the landlord stated that the clause of the tenancy agreement that the tenants had breached was set out in the warning letter that the landlord served on the tenants on February 16, 2011. The section in question addressed the obligation of the tenants to maintain reasonable health, cleanliness and sanitary standards throughout the rental unit.

In March 2011, the tenants put a stop payment on their rent cheque. The tenant acknowledged that she owes \$1075 for March 2011 rent.

The landlord and tenants agreed that the tenancy agreement requires the tenants to pay for 100 percent of the utilities for the house, and then the landlord must reimburse the tenants 35 percent of those costs. In the hearing the tenant submitted receipts showing that the landlord owed \$69.65 for current outstanding utilities. The landlord did not dispute that amount.

Analysis

I find that the notice to end tenancy is not valid. A material term of a tenancy agreement is a term that both the landlord and the tenant agree, at the time of signing the agreement, is so important that the most trivial breach of that term gives the other party the right to end the tenancy. In order to determine if a term is material, I must focus on the importance of the term in the overall scheme of the tenancy agreement. In this case, the landlord did not provide a copy of the tenancy agreement, and I therefore could not determine whether the term regarding reasonable cleanliness had been highlighted and set apart from other terms in the agreement, or consider that term in relation to other terms in the agreement. Further, I do not find that even the most trivial breach of a requirement of “reasonable cleanliness” can amount to a material term. Therefore, the notice to end tenancy is cancelled.

The landlord is entitled to their claim of \$1075 for unpaid rent for March 2011.

The tenants are entitled to their claim of \$69.65 for outstanding utilities.

As the landlord’s application was only partially successful and a portion of the tenant’s application was dismissed, I find that both parties would have only been entitled to partial recovery of their filing fee. On that basis, I decline to grant either party recovery of their filing fee for the cost of their applications.

Conclusion

I grant the landlord an order under section 67 for the balance due of \$1005.35. This order may be filed in the Small Claims Court and enforced as an order of that Court.

I note that the landlord still holds the security and pet deposits in trust and must deal with these in accordance with 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: March 28, 2011.

Residential Tenancy Branch