



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR MNR FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution for an order of possession for unpaid rent, a monetary order for unpaid rent and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Preliminary Issue

The Landlord has applied for an order of possession; however the Landlord has previously been granted an order of possession by the Residential Tenancy Branch, dated February 23, 2011, effective for April 1, 2011. As a result I dismiss his claim for an order of possession.

Issue(s) to be Decided

Is the Landlord entitled to monetary compensation under Section 67 of the Residential Tenancy Act (the "Act") for unpaid rent and unpaid utilities?

Background and Evidence

I heard testimony that this tenancy started on November 15, 2006, monthly rent began at \$1,400.00 and is currently \$1,478.03 and a security deposit and a pet damage deposit each in the amount of \$700.00 was paid on November 15, 2006.

The Landlord submitted into evidence an attachment of the application with the statement of claim, utility bills, a 10 Day Notice to End Tenancy dated March 2, 2011, with an amount of \$1,478.03 listed as unpaid rent and \$332.70 listed as unpaid utilities and the tenancy agreement. I note the tenancy agreement states that the Tenant is

responsible for utilities in the amount of \$200.00 per month. I further note there were handwritten alterations made to the document, apparently by the Landlord.

The Landlord submitted that the Tenant failed to pay rent of \$1,478.03 on March 1, 2011, and further failed to pay gas and hydro for January, February and March, in the amount of \$945.41. The Landlord is also seeking late fees on the March rent and January gas and hydro.

The Landlord's total monetary claim is \$2,398.44, which includes the March rent and late fee, unpaid utilities, and the filing fee.

The Tenant appeared late into the hearing and testified that pursuant to the order of possession, which had been granted by the Residential Tenancy Branch based upon a 2 Month Notice to End Tenancy for Landlord's Use, he had vacated the premises prior to the hearing.

The Tenant testified that he did not pay rent in March due to his entitlement to an equivalence of one month's rent pursuant to the 2 Month Notice to End Tenancy.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations, the Landlord in this case, has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Section 51 (1.1) of the *Act* allows a tenant who has received a notice to end tenancy, which is the case here, to withhold the amount equivalent to one month's rent under the tenancy agreement. I therefore find the Tenant was entitled to withhold the March rent and I **dismiss** the Landlord's claim for \$1,478.03.

Under the tenancy agreement, the Tenant is required to pay \$200.00 per month for utilities. However, it appears the tenancy agreement has been unilaterally altered by the Landlord to obligate the Tenant to pay more than the \$200.00, depending on bills. I find the Tenant, under the tenancy agreement, is obligated to pay \$200.00 each month for utilities and that the Landlord has collected and is attempting to collect an amount in excess of \$200.00 per month. As the Landlord is unable to establish the true amount, if any, the Tenant owes for unpaid utilities throughout the tenancy, I **dismiss** his claim for unpaid utilities. As a result, I **dismiss** the Landlord's application in its entirety, without leave to reapply.

As the Landlord has been unsuccessful in his application, I find he is not entitled to recover the filing fee.

Conclusion

The Landlord's Application is dismissed without leave to reapply.

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 11, 2011.

Residential Tenancy Branch