



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession, a Monetary Order to recover unpaid rent and for money owed or compensation for damage or loss under the Residential Tenancy Act (Act) regulations or tenancy agreement, an Order to keep all or part of the security deposit and to recover the filing fee.

Service of the hearing documents was done in accordance with section 89 of the *Act*; they were served on May 11, 2011. The tenant confirmed receipt of the hearing documents.

Both parties appeared, gave their testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the evidence presented at the hearing, a decision has been reached:

Issues(s) to be Decided

- Is the landlord entitled to an Order of Possession for unpaid rent and utilities?
- Is the landlord entitled to a Monetary Order to recover unpaid rent and utilities?
- Is the landlord entitled to keep all or part of the security deposit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

Both parties agree that the tenancy started on February 01, 2011. This is a month to month tenancy. Rent is \$1,350.00 per month and is due in advance on the first of each month. The tenant paid a security deposit of \$675.00 at the start of her tenancy in two separate payments.

The landlord testifies that the tenant did not pay rent when it was due on May 01, 2011. On May 02, 2011 the landlord served the tenant with a 10 Day Notice to End Tenancy for unpaid rent by posting it to the tenants' door. This Notice was deemed served three days later. The amount owing at that time was \$1,350.00. The landlord testifies that the tenant did attempt to pay \$1,000.00 towards her rent arrears on May 09, 2011 but the landlord was worried if she accepted this it would reinstate the tenancy. The landlord states she sought advice from the RTB and was told she could accept the \$1,000.00 for use and occupancy only. The landlord states the tenant paid this on May 11, 2011 and the tenant made another payment of \$350.00 on May 15, 2011. The landlord marked the receipts for use and occupancy only, and has provided copies of the receipts, as the full rent was not paid within the five allowable days stated on the 10 Day Notice.

The landlord also sought to recover rent for June, 2011 however she agrees the tenant paid this on June 01, 2011 and this payment was also accepted for use and occupancy only. The landlord seeks an Order of Possession to take effect as soon as possible but accepts that as the tenant has paid rent for June she may stay in the unit until June 30, 2011.

The landlord testifies that the tenant agreed to pay two thirds of the utility bills. The landlord states she has always charges tenants a flat rate of \$300.00 per month for utilities but agreed at the start of this tenancy that this tenant could pay two thirds of the utility consumption. The landlord has provided a copy of the tenancy agreement which shows rent at \$1,350.00 plus two thirds of consumption. This section has been initialled by both parties as an amendment. This bill also shows that water, electricity, heat and garbage collection are included in the rent. The landlord states this was an error on her part and she reiterates

that the tenant agreed to pay a two third share of the bills. The landlord has provided a second tenancy agreement entered into after the first one. The landlord states she did this because she thought she had accidentally shredded the first tenancy agreement so asked the tenant to sign another one. In this second agreement the tenant has not initialled the amendment to show she agrees to pay two thirds of the utility bills and it does show that water, electricity, heat and garbage collection are included in rent.

The landlord testifies that the tenant has paid \$150.00 towards her share of the utility bills on March 25, 2011 but has refused to pay any other sums. There is now an outstanding balance of \$1,289.00. The landlord states she has not yet had the city utility bill for April and May but estimates it to be around the same amount as the previous bill which would make the tenants share another \$117.12. The landlord seeks to keep the tenants security deposit in partial payment of the outstanding utilities.

The landlord states there is no other sums owed by the tenant and does not seek money owed or compensation for damage or loss at this time.

The tenant testifies that she tried to pay the sum of \$1,000.00 towards her rent to the landlord on May 09, 2011 within the five day deadline but the landlord refused to accept it. The tenant agrees she did then pay \$1,000.00 on May 11, 2011 and another \$350.00 on May 15, 2011. The tenant agrees the landlord accepted rent for May and June for use and occupancy only. The tenant states she does not owe any rent to the landlord.

The tenant disputes the landlords' testimony and evidence that she owes for utilities. The tenant testifies she did initial the first tenancy agreement to say she would pay two thirds of consumption but states this was for garbage and water. The tenant states she entered into a new tenancy agreement with the landlord and realized that her rent included water, electricity, heat and garbage collection so did not initial to agree to the landlords amendment to show the tenant must pay two thirds of consumption. The tenant states she does not owe the landlord for utilities.

The tenant agrees she did pay \$150.00 in March, 2011 but this was for her share of the city water, sewage and garbage collection bill. She states she paid in advance for this because her share of this bill only came to \$117.12. The tenant states if another bill is due for this she is willing to pay it less the credit she has for the previous bill.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. With regard to the 10 Day Notice to End Tenancy. I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to s. 88 of the *Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay all the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

As the landlord omitted to put an effective date on the Notice it is presumed that the effective date would be 10 days after service. As the Notice was served on the tenants' door it was not deemed to have been received until three days after posting. Therefore, the effective date of the Notice becomes May 15, 2011 pursuant to s. 53 of the *Act*. The landlord accepted rent from the tenant after the five allowable days and marked the receipts for use and occupancy only. Therefore, in doing so the landlord did not reinstate the tenancy. Based on the foregoing, I find that the tenant is conclusively presumed, under s. 46(5) of the *Act*, to have accepted that the tenancy ended on the amended date of the Notice. The Notice is therefore upheld and I grant the landlord an order of possession pursuant to s. 55 of the *Act*.

With regard to the landlords claim for a Monetary Order for unpaid rent, as there are no longer any rent arrears this section of the landlords' application is dismissed without leave to reapply.

With regard to the landlords claim for a Monetary Order for unpaid utilities; I have considered both parties arguments in this matter and find when the landlord entered into a new tenancy agreement with the tenant the previous agreement became null in void. Due to this the evidence shows that the landlord did mark the tenancy agreement to state that

water, electricity heat and garbage collection are included in the rent. Even if this is an error on the part of the landlord the fact remains that a tenancy agreement is a binding document that informs both parties of the agreement they have signed for. As the tenant has not initialed the section that states she must pay a two thirds share for consumption I must be bound by the terms of the tenancy agreement. Consequently, it is my decision that water, electricity, heat and garbage collection are included in the rent and therefore the landlords application to recover unpaid utilities is dismissed without leave to reapply.

As the landlord has been partially successful in this matter I find she may recover **\$25.00** from the tenant towards the cost of filing her application pursuant to s.72 (1) of the *Act*. The landlord pay deduct this sum from the tenants security deposit which leaves a balance of \$650.00 which must be dealt with in accordance to s. 38 of the *Act*.

Conclusion

I HEREBY ISSUE an Order of Possession in favour of the landlord effective on **June 30, 2011**. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

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: June 06, 2011.

Residential Tenancy Branch