



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC, ERP, FF
OPR, OPC, MNR, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Tenants (J.B. and W.T. only) to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 18, 2011, to cancel a One Month Notice to End Tenancy for Cause dated August 16, 2011, for an Order requiring the Landlord to make emergency repairs and to recover the filing fee for this proceeding. The Landlord applied for an Order of Possession and a Monetary Order for unpaid rent and utilities, to recover the filing fee for this proceeding and to keep the Tenants' security deposit in partial payment of those amounts.

The Landlord said on August 25, 2011 she served the Tenants with the Application and Notice of Hearing by registered mail (the "hearing package"). The Landlord said she also served the Tenants in person with her evidence package. Based on the evidence of the Landlord, I find that the Tenant, R.M., was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the R.M.'s absence.

Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent and utility arrears and if so, how much?
3. Is the Landlord entitled to keep the Tenants' security deposit?
4. Are emergency repairs required?

Background and Evidence

This tenancy started on March 1, 2011 as a fixed term tenancy that expired on June 30, 2011 and continued on a month-to-month basis. Rent was \$1,400.00 per month payable in advance on the 1st day of each month plus 40% of the gas and hydro expenses for the rental property. Rent included basic cable and internet. On March 2, 2011, the Parties signed an addendum to the tenancy agreement in which the Tenants agreed to pay additional monthly charges for a digital cable box and additional cable channels.

The Landlord said on July 18, 2011 she gave the Tenants a written demand for utility arrears of \$125.05 however that amount remained unpaid so on August 18, 2011 she

served the Tenants in person with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 18, 2011. The Landlord said this amount was not paid within the 5 days granted on the Notice and utilities for July and August 2011 also were not paid. J.B. and W.T. moved out on or about August 28, 2011 without giving the Landlord any notice or a forwarding address. The Landlord said she executed a new tenancy agreement with the remaining Tenant, R.M., on August 30, 2011 for a one month fixed term tenancy which expires on September 30, 2011 for the monthly rent of \$500.00 which includes utilities. The Landlord said on September 1, 2011, R.M. paid \$500.00 for her share of September 2011 rent and utilities and on September 9, 2011 she paid \$73.94 as her share of the past due utilities. Consequently, the Landlord sought to recover the other Tenants' share of past due utilities and rent for September 2011.

The Tenants, J.B. and W.T., claimed that it was unnecessary for them to give the Landlord notice they were moving out because they moved out on the effective date of the Notice. J.B. and W.T. admitted that they applied to dispute the 2 Notices to End Tenancy but claimed they had already planned to move out and disputed the Notices only to give them more time. J.B. and W.T. also denied that they had unpaid utilities as alleged by the Landlord. W.T. claimed that when she made a payment for July rent, she paid an additional \$200.00 for June utilities and received a receipt for that. W.T. also claimed that she received a receipt from the Landlord on August 16, 2011 for her payment for utilities for July 2011. J.B. initially claimed that he and W.T. paid all of the utilities and got receipts for them from the Landlord. J.B. then claimed that he paid all of the utilities but the Landlord gave them a receipt some time later that did not show his payment for utilities. J.B. then claimed that he paid for all of the utilities except for August because the Landlord was not giving him receipts for utilities. J.B. then claimed that he withheld payment of August utilities because he was upset with the Landlord for failing to deal with a furnace problem. The Tenants admitted that they made their rent and utility payments in cash and did not have any other documentary evidence of them.

Analysis

RTB Policy Guideline #13 (Rights and Responsibilities of Co-Tenants) says at p. 1 as follows:

“Co-Tenants are 2 or more tenants who rent the same property under the same tenancy agreement.....Co-Tenants are jointly and severally liable for any debts or damages relating to the tenancy..... Where co-Tenants have entered into a periodic tenancy and one tenant moves out, that tenant may be held responsible for any debt or damages relating to the tenancy *until the tenancy agreement has legally ended*...If the tenant who moves out gives proper notice to end the tenancy, the tenancy agreement will end on the effective date of that notice, and all tenants must move out. If any of the tenants remain in the premises and continue to pay rent after the date the notice took effect, the parties may be found to have entered into a new tenancy agreement and the tenant who moved out is not responsible for carrying out this new agreement.”

I find that the Tenants, J.B., W.T. and R.M., were co-Tenants under the terms of their tenancy agreement they signed on February 23, 2011 and that as of July 1, 2011 it was a periodic or month-to-month tenancy. I also find that the Tenants, J.B. and W.T., moved out of the rental unit on August 28, 2011 and that the Landlord executed a new tenancy agreement with R.M. on August 30, 2011. Consequently, I find that the tenancy of J.B. and W.T. ended on August 30, 2011 when the Landlord entered into a new tenancy agreement with R.M. and that for this reason, I find that the Landlord is not entitled to recover rent or utilities from J.B. and W.T. for September 2011.

For similar reasons, I find that the Landlord's application for an Order of Possession must be dismissed. In particular, I find that although the Landlord issued the Tenants a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 18, 2011 and a One Month Notice to End Tenancy for Cause dated August 16, 2011, she effectively withdrew those 2 Notices to End Tenancy when she reinstated the tenancy of R.M. on August 30, 2011 and as a result, the Landlord cannot now seek to enforce those 2 Notices against her.

The Landlord also claimed that the following utilities are unpaid:

- Gas for the period, May 13, 2011 to August 12, 2011 in the amount of \$50.34;
- Hydro for the period, March 15 to September 14, 2011 in the amount of \$235.15; and
- Cable for the period, June 7, 2011 to September 6, 2011 in the amount of \$136.85.

In support of her position, the Landlord provided the following documentary evidence:

- a copy of a receipt dated June 4, 2011 which states "received from R.M., W.T. and J.B. \$1,400.00 for June 2011 rent and \$210.00 for utilities."
- a receipt dated August 16, 2011 which states, "received from R.M., W.T. and J.B., \$1,400.00 for July 2011 rent, \$1,400.00 for August 2011 rent, Utilities of \$125.05 are overdue."
- a copy of a 10 Day Notice to End Tenancy dated August 18, 2011 which alleges unpaid utilities of \$125.05.
- a written acknowledgement from R.M. dated August 27, 2011 that her 1/3 share of the unpaid utilities was \$73.94.

The Tenants, J.B. and W.T., disputed these amounts and claimed that they made utility payments in June and July 2011 so that only utilities for August 2011 were owed. These Tenants argued that the Landlord's receipt dated August 16, 2011 failed to acknowledge payments by them for June and July 2011 utilities.

I find on a balance of probabilities that utility bills for service periods following June 4, 2011 are unpaid as alleged by the Landlord. I make this finding in part based on the consistency of the Landlord's oral evidence which is corroborated by her documentary

evidence. I also make this finding in part based on the inconsistency of the oral evidence of J.B. and W.T. (which changed many times throughout the hearing) and their lack of *any* corroborating evidence. Consequently, I find that the following utility amounts are unpaid:

Gas: May 13 – June 13, 2011 in the amount of **\$18.14**;
Gas: June 13 – July 13, 2011 in the amount of **\$14.74**;
Gas: July 13 – August 12, 2011 in the amount of **\$18.03**;
Hydro: May 14 – July 13, 2011 in the amount of **\$66.55**;
Hydro: July 14 – September 14, 2011 in the amount of \$51.84 (pro-rated to August 30, 2011 for a total of **\$44.07** (or $\$51.84/63 \text{ days} = \$0.92/\text{day} \times 48 \text{ days}$)
Cable: July 7 – August 6, 2011 in the amount of **\$59.05**;
Cable: August 7 – September 6, 2011 in the amount of **\$52.15** (no adjustment is made to August 30, 2011 for this service due to the requirement to give advance notice to end it)

Given that the Hydro bill for the period, March 15 – May 13, 2011, in the amount of \$116.76 was issued prior to the Tenants' payment on June 4, 2011, I find it likely that this amount was paid by the Tenants. Consequently, I find that there are unpaid utilities in the total amount of \$272.73 which must be reduced by \$73.94 to reflect the payment of R.M. on September 9, 2011 for a total owing of **\$198.79**.

The Landlord also sought to recover registered mail expenses of \$34.71, future collection costs of \$500.00 and photocopying expenses of \$21.86, however the Act does not make any provision for a party to recover costs and as a result this part of the Landlord's application is dismissed without leave to reapply. The Landlord further sought to recover estimated cleaning and repair expenses, however the Landlord admitted that she has no idea at this point in time what these expenses will be (if any). Consequently, I find that this part of the Landlord's application is premature and it is dismissed with leave to reapply. As the Landlord has only been partially successful in this matter, I find that she is entitled to recover one-half of the filing fee she paid for this proceeding or \$25.00.

I order the Landlord pursuant to s. 38(4) of the Act to keep \$223.79 of the Tenants' security deposit in full satisfaction of her claim in this matter. The Landlord must deal with the balance of the Tenants' security deposit as required by s. 38(1) of the Act.

Conclusion

As the tenancy of the Tenants, J.B. and W.T., has ended, their application is dismissed in its entirety without leave to reapply. The Landlord's application for an Order of Possession is dismissed without leave to reapply. The Landlord's application for a Monetary Order is granted in part on the above-noted terms.

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: September 26, 2011.

Residential Tenancy Branch