



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction

This hearing dealt with the landlord's application for an Order of Possession and a Monetary Order for unpaid rent and utilities. The tenants did not appear at the hearing. The landlord provided registered mail receipts to show that each of the tenants were served with the hearing documents via registered mail sent to the rental unit on September 30, 2011. The landlord testified that the tenants resided at the rental unit until October 15, 2011. I was satisfied that the tenants were served with the hearing documents in a manner that complies with the Act and I proceeded to hear from the landlord without the tenants present.

As I heard the tenants have vacated the rental unit, I determined an Order of Possession is no longer required and I do not provide one with this decision. Accordingly, the remainder of this decision pertains to the landlord's monetary claims only.

During the hearing, the landlord verbally requested that I amend the application to include loss of rent for October 2011 and missing property. I denied this request for amendment as the tenants have not been notified of the landlord's additional claims. The landlord remains at liberty to make a subsequent application for such losses.

Issue(s) to be Decided

Has the landlord established an entitlement to recover unpaid rent and utilities for September 2011?

Background and Evidence

The one year fixed term tenancy commenced October 14, 2010 and was set to expire October 14, 2011. The tenants were required to pay rent of \$1,500.00 plus 70% of all utilities pursuant to the tenancy agreement. The tenants paid a \$750.00 security deposit on September 25, 2010. The utilities were paid to the utility company by the landlord and the landlord would then demand payment from the tenants.

On September 3, 2011 the landlord personally served each of the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the Notice). The Notice indicates the tenants failed to pay \$1,100.00 in rent as of September 1, 2011 and utilities of \$1,708.48 that were demanded on August 12, 2011. The tenants did not file to dispute the Notice but did pay the landlord \$2,100.00 on September 7, 2011 and \$310.00 on September 9, 2011. The tenants vacated the unit on October 15, 2011

In making this application the landlord is seeking to recover \$514.03 from the tenants. The landlord provided the following information with respect to this amount. Taking into account the payments made by the tenants in September 2011, the tenants still owe \$398.48 in rent and utilities based upon the 10 Day Notice. Subsequent utilities bills arrived for gas in the amount of \$44.13 for the period of August 4 – September 1; and cable and internet from Telus in the amount of \$120.96 for services up to September 3, 2011. Applying the tenants' portion of 70% to these subsequent bills, the tenants owe the landlord a further \$115.55 bringing the total claim to \$514.03.

Documentary evidence provided for this proceeding included: the tenancy agreement; the 10 Day Notice; Proof of Service of the 10 Day Notice upon each of the tenants; utility bills; written communication to the tenants dated September 10, 2011 with respect to their partial payments and subsequent utility bills; written submission of the landlord; and registered mail receipts.

Analysis

Upon review of the tenancy agreement I note that the parties have indicated that all utilities are included in rent; however, in the additional information portion of the agreement it states that "all utilities are shared (sic) 70% pay tenant, 30% pay landlord". I accept that the tenants are responsible for paying 70% of all utilities including water, electricity, cable and gas.

The Proof of Service documents submitted into evidence satisfy me that each of the tenants were served with a copy of the 10 Day Notice as indicated by their respective signatures acknowledging receipt of the Notice.

Based upon the undisputed Notice and the utility bills provided to me, I accept that the amounts appearing on the Notice are correct and that the tenants still owe the landlord \$398.48 for those utilities. I further accept that the tenants owe for the utility bills received in early September 2011 and demanded by the landlord, in writing, on

September 10, 2011. Accordingly, I grant the landlord's request to recover \$514.03 from the tenants, as claimed in this application.

Given the landlord's success in this application, I further award the filing fee to the landlord. Provided to the landlord with this decision is a Monetary Order in the amount of \$564.03 to serve upon the tenants.

As the landlord did not request retention of the security deposit, it remains in trust for the tenants, to be administered in accordance with the Act.

Conclusion

The tenancy has ended and the landlord has been provided a Monetary Order in the amount of \$564.03, representing rent and utilities owed as of September 10, 2011, to serve upon the tenants. The security deposit remains in trust, to be administered 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: October 28, 2011.

Residential Tenancy Branch