



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPR, MNR, MNSD, FF
Tenant: CNR

Introduction

This hearing was convened by way of conference call in response to applications made by the landlords and by the tenants. One of the tenants has applied for an order cancelling a notice to end tenancy for unpaid rent or utilities under file number #####. The landlords have applied under file number &&&&& against two tenants for an Order of Possession for unpaid rent or utilities, for a monetary order for unpaid utilities, for an order permitting the landlords to keep all or part of the pet damage deposit or security deposit, and to recover the filing fee from the tenants for the cost of this application.

An agent for the landlord, who has also been named as a landlord in the Landlord's Application for Dispute Resolution, attended the conference call hearing and provided evidence in advance of the hearing to the Residential Tenancy Branch and to the tenant(s). Both tenants also attended, however only one of the tenants has been named on the Tenant's Application for Dispute Resolution. A witness for the tenant(s) also attended and gave affirmed testimony.

The applications before me do not contain identical names or names with identical spellings. Neither party has requested that either of the applications be amended. The tenant stated that the person attending for the landlord is not known to the tenant and is not the landlord. The landlord did not attend the hearing, however the person attending attended as an agent for the landlord.

The parties also gave affirmed testimony and were given the opportunity to cross examine each other and the witness on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Are the landlords entitled to an Order of Possession for unpaid rent or utilities?
- Are the landlords entitled to a monetary order for unpaid rent or utilities?

- Are the landlords entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?
- Are the tenants entitled to an order cancelling a notice to end tenancy for unpaid rent or utilities?

Background and Evidence

The parties agree that this fixed term tenancy began on May 1, 2011, expired after 6 months and then reverted to a month-to-month tenancy. Rent in the amount of \$1,600.00 per month is payable in advance on the 1st day of each month, and the tenancy agreement, a copy of which was provided for this hearing, requires the tenant to pay 50% of the Fortis Gas and BC Hydro bills. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$800.00, and no pet damage deposit was collected. No move-in condition inspection report was completed.

The landlord's agent testified that the tenant failed to pay rent in full for the month of November, 2011 and paid the landlord \$800.00 sometime after November 1, 2011, but does not recall the date. The tenant also failed to pay outstanding hydro for the month of December, 2011 in the amount of \$129.65 as well as the Fortis Gas bill of \$98.85. Those amounts are the tenant's portion. The January, 2012 bills are the same amount because of equal payment plans with the utility companies, and have not been paid by the tenants, although the bills have not yet been delivered to the tenants. The tenants further failed to pay any rent for the months of December, 2011 or January, 2012.

The landlord's agent personally served one of the tenants named in the landlord's application with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on December 13, 2011, a copy of which was provided by the tenant in advance of the hearing. The notice is in a form that is not an approved form, and states that the tenant failed to pay rent in the amount of \$1,800.00 that was due on December 1, 2011. When asked why the notice states that the amount of \$1,800.00 was due on December 1, 2011, the landlord's agent testified that the tenant promised to pay \$800.00 by December 10, 2011 but didn't; if the tenant had paid, the tenant would be in arrears \$1,600.00 plus outstanding utilities, and the tenants actually owed more than the amount stated in the notice. The landlord stated that the rent has never been paid on time and the tenants are difficult to get ahold of.

The landlord further testified that utilities are paid by the landlord, who is responsible for 50% and the landlord takes a copy of the bills to the tenants to collect the tenants' 50% share. The tenants received the December utility bills on or about December 8, 2011

but have not yet received January's bills. When asked how the hydro bill went from \$140.00 to almost double that amount, the landlord replied that instalments are \$140.00 for the equal payment plan, but the actual bill for December, 2011 is almost \$260.00.

The landlord also testified that the other landlord refused a payment from the tenants in the amount of \$800.00 on or about December 20, 2011 because the landlord did not want to reinstate the tenancy.

One of the tenants testified that November's rent was paid by an instalment of \$1,200.00 on the 11th of November and \$1,012.00 on the 25th of November, 2011 as arranged with the landlord who did not attend this hearing. Those amounts were to cover rent and utilities.

The tenant further testified that the landlord who attended this hearing is not the landlord and has not been present for any conversations between the landlord and the tenants. The landlord and the tenant agreed that between the 13th and 16th of December, the tenant could pay December's rent, but the tenant received a notice to end tenancy on the 13th of December, 2011 saying that \$1,800.00 was outstanding. The tenant called the landlord to arrange to pay \$800.00 but the landlord declined saying that if it wasn't the full amount, the landlord was refusing to accept it.

The tenant further testified that none of the December's utility bills have been provided to the tenant. The landlord also refused January's rent. The tenant stated that the landlord had advised that the landlord wants the tenant to move so the rental unit can be renovated to provide for another rental suite.

The tenants' witness testified to being present on December 16, 2011 while the tenant was speaking to the landlord on the phone with the speaker phone feature turned on. The tenant offered the landlord \$800.00 and the landlord refused.

Analysis

The *Residential Tenancy Act* states:

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(2) A notice under this section must comply with section 52 [form and content of notice to end tenancy].

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

In this case, the landlord did not use the approved form, but used a form that has been replaced as the approved form under the regulations.

I further find that the notice does not contain correct information, in that the landlord who attended this hearing was unable to convince me that as at December 1, 2011 the tenant owed the landlord(s) \$1,800.00.

I further find that the landlord who attended this hearing was not able to dispute the testimony of the tenant that arrangements had been made for the payment of rent with the only landlord that the tenants have dealt with. That landlord did not attend the hearing and was not subject to cross examination. The tenant testified that parties had an agreement, albeit not in writing, with respect to rental and utility arrears.

The landlord who attended this hearing testified that on December 20, 2011 or so, the landlord refused to accept \$800.00 for December's rent. The tenant testified that the date was December 16, 2011, and a witness for the tenant also provided that testimony. A landlord must not refuse rent and then apply for an Order of Possession; the landlord was owed the money whether it was offered on December 16 or 20, 2011 and was entitled to it. As for reinstating the tenancy, the landlord can collect rent and not reinstate the tenancy if the landlord provides the tenant with a receipt that has marked on it "For Use and Occupancy Only."

It is not clear to me in the testimony and evidence received what exactly is owed to the landlord(s). However, if rent remains unpaid, the landlord(s) are at liberty to serve the tenants with a notice to end the tenancy in the approved form. The tenants then have 5 days to pay the rent in full or dispute the notice, and in either case the notice would then have no effect. If the tenants fail to do either, the tenants would be conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, which must be no less than 10 days after the tenants have been served or are deemed to have been served with the notice.

In summary, I find that the landlords have issued a notice to end tenancy that does not comply with the *Act* or the regulations, issued the notice without the ability to explain the amount claimed in the notice, and the only landlord that attended the hearing was not able to substantiate or deny agreements made with the other landlord and the tenant.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed.

The tenants' application is hereby allowed and the notice to end tenancy is hereby cancelled.

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: January 10, 2012.

Residential Tenancy Branch