



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession for unpaid rent, a monetary order for unpaid rent or utilities and recovery of the filing fee. Both parties participated in the conference call hearing.

Issue(s) to be Decided

Is the landlord entitled to any of the above under the Act.

Background and Evidence

This tenancy began November 1, 2011 with monthly rent of \$1500.00.

On January 11, 2012 the landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent.

The landlord testified that the tenants have repeatedly paid the rent late and that they have not paid the utilities. The landlord stated that he had given the tenants a demand letter for the utilities however the tenants responded by saying that this was not true. The tenants stated that the landlord has also not been providing them with copies of the utility bills nor has the landlord ever given the tenants a demand letter for unpaid utilities. The tenants also stated that they had paid the January and February rent in cash and had a receipt from the landlord however the landlord stated that this rent remains unpaid.

The tenants testified that the rent had been late as the landlord was completing a name change on the title for the property and the tenants needed the updated information for the ministry to process their rent. The tenants stated that the information was not provided until November 6, 2011 which resulted in the rent being late. The tenants stated that they had a cheque for the December rent however the landlord refused to accept the cheque and insisted on cash which caused a delay.

The tenants stated that in regards to the landlord being denied entry to complete inspections that the landlord does not provide proper notice to the tenants and on one occasion wanted to conduct an inspection at 10:45PM. The landlord refuted this testimony by stating they he knew 24 hour notice had to be given prior to entry and that the tenants had told him that per the Act he could only inspect every 3 months.

The tenants stated that in regards to the landlord feeling threatened or having his peace and quiet enjoyment adversely affected, the tenants stated that the landlord had come to the rental property demanding payment for the utilities and attempted to push the door open. The tenants stated that an argument ensued and the door was forced closed on the landlord.

Both parties throughout the hearing continually refuted the others testimony.

Analysis

Based on the documentary evidence and testimony of the parties I find on a balance of probabilities that the landlord has not met the burden of proving that they are entitled to an order of possession for cause or a monetary order for unpaid rent or utilities.

The landlord has not provided evidence of the tenants having made repeated late rent or utility payments. The landlord has not provided the tenants with a demand letter for unpaid utilities nor has the landlord provide the tenants with copies of the utility bills as required under the Act.

Residential Tenancy Act section **46 landlord's notice non-payment of rent** speaks to:

(6) If

- (a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and
 - (b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,
- the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

In regards to the landlord's claim that the tenant's deny him access to inspect the rental unit, the landlord must comply with the Act and provide the tenants with 24 hour written notice to conduct an inspection. When a landlord does not provide proper notice to a tenant, the tenant is not obligated to allow the landlord entry.

Residential Tenancy Act section **29 Landlord's right to enter rental unit restricted** speaks to:

- (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:*

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

In regards to the landlord's claim that the tenant's have seriously jeopardized the landlord or another occupant or adversely affected the peace and quiet enjoyment of the landlord or another occupant, the landlord could not substantiated his claim in this regard.

The landlord's 1 Month Notice to End Tenancy for Cause dated January 11, 2012 is hereby set aside with the result that the tenancy continues uninterrupted.

As the landlord has not been successful in their application the landlord is not entitled to recovery of the \$50.00 filing fee.

Conclusion

The landlord's application is dismissed without leave to reapply.

1 Month Notice to End Tenancy for Cause dated January 11, 2012 is hereby set aside with the result that the tenancy continues uninterrupted.

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: February 22, 2012

Residential Tenancy Branch