



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing was convened in response to applications by the tenant's and the landlord.

The tenant's application is seeking orders as follows:

1. Cancel the notice to end tenancy for unpaid rent or utilities; and
2. Monetary order for money owed.

The landlord's application is seeking orders as follows:

1. Order of possession for unpaid rent;
2. Monetary order for unpaid rent; and
3. Keep all or part of the security deposit.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Issue(s) to be Decided

Should the notice to end tenancy be cancelled?

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent and utilities?

Background and Evidence

The tenancy began on July 15, 2011. Rent in the amount of \$1,750.00 was payable on the first of each month. On November 1, 2011, rent was to increase to \$2,300.00, as the tenants would also be renting the lower rental unit when vacated by the existing occupants. A security deposit of \$1,150.00 was paid by the tenants.

The parties agree that the tenants were served with a one month notice to end tenancy for cause, with and effective date of February 29, 2012.

The tenant testified that he accepted the notice to end tenancy and is moving from the rental unit on February 29, 2012. The tenant stated that he is disputing the amount of money owed to the landlord for unpaid rent.

The parties agree that the landlord is entitled to an order of possession for February 29, 2012 at 1:00 p.m.

Exterior deck

The parties agree rent for August 2011, was reduced to \$650.00 and in exchange the tenant was to build an exterior deck on the rental property.

The landlord testified that the exterior deck is not complete and is seeking to recover \$1,100.00 in loss rent for August 2011. The landlord further stated that part of the deck has been completed and the value of work left to be done is about \$550.00.

The tenant testified the deck framing is completed, and only the top boards for the deck need to be installed and that he values the work left to be done at \$300.00.

Rent

The landlord testified the tenants October 2011, rent cheque was returned by the bank for insufficient funds.

The tenant agrees that the cheque was returned from the bank, however, his employer issued a new cheque to the landlord and October 2011, rent has been paid.

The landlord later testified that he does remember a second cheque being issued, but does not have that information and will concede that rent for October 2011, has been paid as he has no information to the contrary.

The landlord testified the tenant was to start paying rent in the amount of \$2,300.00 for November 2011, and the tenant only paid \$1,750.00 and is seeking to be compensation in the amount of \$550.00.

The tenant testified that he did not take possession of the lower rental unit until December 2011, therefore not required to pay any additional rent.

The landlord testified that rent for December 2011, has not been paid in the amount of \$2,300.00 and the cheque the tenant issued in the amount of \$1,935.91 was returned for insufficient funds.

The tenant testified that he agrees he owes December 2011, rent. The tenant states he disputed that he owed \$2,300.00 for December 2011, rent, because the occupants of the lower rental unit did not pay their portion of the hydro bill when they vacated the rental unit and the landlord agreed that he could deduct their portion of the hydro bill from his December 2011, rent. The tenant states that he owes \$1,935.91 for December 2011 rent.

The landlord states there was an agreement, but was not aware of the amount.

The landlord testified the tenants made a partial payment for January 2012, rent and still owes \$300.00 in unpaid rent.

The tenant acknowledges that he owes \$300.00 for January 2012, rent.

The landlord testified the tenant owes \$2,300.00 for February 2012 as the tenants cheque was returned for insufficient funds.

The tenant testified that he agrees he owes February 2012, rent.

The tenant argues the landlord agreed to reduce his rent by \$30.00 per month, as he has been paying the hydro bill for the landlords coach house. The tenant states he is seeking compensation in the amount of \$30.00 per month for the seven months that he did not receive the rent reduction and is seeking compensation in the amount of \$210.00. Filed in evidence is an email dated February 13, 2012.

The landlord does not dispute the agreement.

Utilities

The landlord testified the tenant has not paid the water bill and is seeking compensation in the amount of \$372.00.

The tenant testified he agrees that he has not paid the water bill.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Exterior Deck

In this case, the parties have co-mingled a tenancy agreement, with an employment agreement. The landlord accepted rent in the amount of \$650.00; in exchange provided the tenant credit in the amount of \$1,100.00 to build an exterior deck.

The evidence of the parties was that the tenant has started the exterior deck. However, the parties are in dispute as the tenant has not finished the deck.

My authority gives me the jurisdiction to make decision that are within the scope of the Residential Tenancy Act, as the landlord accepted a lower rent in August 2011, from the tenants, in exchanged for work. I find that rent for August 2011, has been paid.

Further, I find I have no jurisdiction to determine an employment contract or assess the value of work completed on the exterior deck. Therefore, I dismiss the landlord claim for compensation for \$1,100.00, for lack of jurisdiction.

Rent

The evidence of the landlord was that he concedes October 2011, rent has been paid. Therefore, I dismiss landlord claim for compensation for October 2011, rent.

The evidence of the landlord was the tenant took possession of the lower rental unit on November 1, 2011 and the tenants rent was short \$550.00. The evidence of the tenant was they did not take possession of the lower rental unit until December 1, 2011. In the absent of any addition evidence by the landlord, I find there is insufficient evidence to prove when the tenants took possession of the lower rental unit. Therefore, I dismiss the landlords claim for compensation.

The evidence of the parties was the tenant's pays the hydro bill for the upper rental unit, the lower rental unit and the landlord's coach house.

The evidence of the parties was the tenants were entitled to deduct a portion off December 2011, rent, as compensation for the occupants in the lower rental unit not paying their portion of the hydro bill. Therefore, I find that the tenants owe \$1,935.91 rent for December 2011.

The evidence of the parties was the tenants owe \$300.00 for January 2012, rent. Therefore, I find that the tenants owe \$300.00 rent for January 2012.

The evidence of the parties was the tenants have not paid rent for February 2012. Therefore, the landlord is entitled to rent for February 2012, in the amount of \$2,300.00.

The tenant is seeking compensation for the landlord's portion of the hydro bill that he has paid for coach house for the past seven month. The email of February 13, 2012, filed in evidence, indicates there was an agreement by the parties for the tenant to receive a rent reduction in the amount of \$30.00 per month. The evidence of the tenant was they have not received the benefit of that rent reduction. Therefore, I find the tenants are entitled to compensation in the amount of \$210.00.

Utilities

The parties agree the tenants owe \$372.00 for the water bill. Therefore, I grant the landlord compensation in the amount of \$372.00 for water bill.

I find that the landlord has established a total monetary claim of \$4,797.91 comprised of rent, utilities owed and \$100.00 filing fee paid by the landlord.

I order that the landlord retain the deposit and interest of \$1,150.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$3,647.91.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

I grant the landlord an order of possession for February 29, 2012 at 1:00 p.m.

I grant the landlord a monetary order, and may keep the security deposit in partial satisfaction of the claim.

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 23, 2012.

Residential Tenancy Branch