



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing was convened by way of conference call in repose to the landlords' application for an Order of Possession for unpaid rent and utilities; for a Monetary Order for unpaid rent or utilities; and to recover the filing fee from the tenants for the cost of this application.

One of the tenants and both landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlords and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

At the outset of the hearing the landlords advised that the tenants are no longer residing in the rental; unit, and therefore, the landlord withdraws the application for an Order of Possession.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

Both parties agree that this tenancy originally started on November 01, 2010 as a fixed term for one year. The parties entered into a new month to month tenancy agreement on December 01, 2011. Rent for this unit was \$1,800.00 per month and was due on the first day of each month in advance.

The landlord testifies that the tenants gave Notice to end the tenancy on December 16, 2011 effective on January 31, 2012. The landlord testifies that the tenants failed to pay rent for January, 2012 and a 10 Day Notice to End Tenancy for unpaid rent was served upon the tenants on January 02, 2012. This Notice was posted on the tenants' door and had an effective date of January 14, 2012. The landlord testifies that on January 14, 2012 they received a Notice from the tenants informing the landlords that the tenants had moved from the rental unit and the keys were in the mail box.

The landlord testifies that when they filed their application they were unsure when the tenants would be vacating the unit so they also applied for unpaid rent for February, 2012. However the landlord testifies that as the tenants did moved out in January they will limit their claim to recover unpaid rent for January only.

The landlord also testifies that there is an outstanding amount for utilities owed by the tenants but as the utility bill only arrived the day before the hearing the landlord has not yet had the opportunity to present that bill to the tenants.

The tenant testifies that they had entered into a new tenancy agreement with the landlords in which the landlords had indicated that the tenants would be responsible for the irrigation and tree trimming. The tenant testifies that this work is the landlords' responsibility. The tenant testifies that they had completed a list of work around the property for the landlords that the landlords agreed to pay the tenants for. As the landlords had not paid the tenants the tenants withheld their rent for January, 2012.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties.

Section 26 of the Act states: *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

Consequently if the tenants had entered into a separate agreement with the landlords to do work on the premises as alleged the tenants are not entitled to withhold an amount of rent for this work unless they have a right under the *Act* to do so or something in writing from the landlord that allows the tenants to reduce or withhold their rent. As the tenants have provided no evidence to support either of these options then it is my decision that the landlords are entitled to recover rent for January, 2012 to the sum of **\$1,800.00** and a Monetary Order has been issued for this amount pursuant to s. 67 of the *Act*.

As the landlords have been successful with their reduced claim I find the landlords are entitled to recover the **\$50.00** filing fee from the tenants pursuant to s. 72(1) of the *Act*.

With regards to the landlords claim for unpaid utilities as the landlord has not yet had the opportunity to present the tenants with copies of the utility bills and demand for payment of these bills within 30 days this section of the landlords claim is dismissed with leave to reapply.

Conclusion

I HEREBY FIND in favor of the landlord's reduced monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,850.00** comprised of unpaid rent and the filing fee. The Order must be served on the respondents and is enforceable through the Provincial Court as an order of that Court.

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 02, 2012.

Residential Tenancy Branch