



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 was convened by way of conference call in repose to the landlord's 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 tenant for the cost of this application.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on January 19, 2012. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

At the outset of the hearing the landlord advised that the tenant is 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 and utilities?

Background and Evidence

The landlord testifies that this month to month tenancy started on November 01, 2011. Rent for this unit was agreed at \$1,750.00 per month and was due on the first day of each month in advance.

The landlord testifies that the tenants did some cleaning for the landlord at the start of the tenancy and the landlord allowed a rent reduction for this work to the sum of \$160.00 from Novembers rent. The tenants were allowed another reduction for November of \$400.00 because the dryer in the unit did not work at that time. The tenants also overpaid their security deposit by \$15.00 so were also allowed to deduct this from Novembers rent. The total amount of rent agreed upon for November was therefore \$1,175.00 which the tenant paid.

In December the tenant only paid the sum of \$1,350.00 in rent and deducted another \$400.00 without permission of the landlord. The landlord testifies that the tenant was informed she owed \$400.00 for Decembers rent but the tenant refused to pay this. The landlord waited until Januarys rent was due hoping the tenant would pay the additional \$400.00 then but the tenant failed to pay any rent for January, 2012. The landlord testifies that the tenant was served with a 10 Day Notice to End Tenancy on January 10, 2012 in person. This Notice states the tenants owe \$400.00 for December and \$1,750.00 for January and February, 2012. The landlord has not provided a copy of this Notice in evidence. The landlord testifies that the 10 Day Notice had an effective date of January 20, 2012 and the landlord thinks the tenants moved from the rental unit on or about January 21, 2012.

The landlord seeks to recover unpaid rent for December and January of \$2,150.00 and seeks to recover a loss of rent for February of \$1,750.00.

The landlord testifies that the tenant did not inform the landlord she was moving and failed to return the keys to the landlord. The landlord also testifies that the tenant has left some

furniture and belongings in the rental unit and is unsure if she can deem the unit to be abandoned so has been unable to re-rent the unit for February, 2012.

The landlord testifies that the tenancy agreement shows that rent does not include Hydro. The tenant was supposed to put the Hydro account into her own name but failed to do so. The landlord has received a Hydro bill which the tenants have not paid. This bill is dated from October 14 to December 15, 2011 as the tenants did not actually move into the unit until November 01, 2011 the landlords have pro-rated the bill to include Hydro used for the period from November 01 to December 15, 2011. The landlord has calculated this amount to be \$416.08. The landlord states there will be another Hydro bill coming in for the period from December 16, 2011 to January, 2012 but as they have not yet received this bill they cannot adjust their claim accordingly.

The landlord also seeks to recover the \$50.00 filing fee paid for this application.

Analysis

The tenant did not appear at the hearing to dispute the landlords claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I have carefully considered the landlords documentary evidence and affirmed testimony before me.

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.*

The landlord has testified that the agreement for a rent reduction was only for November and did not extend into December, 2011. The landlord has therefore established their claim for unpaid rent for December, 2011 and January 2012 to the sum of **\$2,150.00**. The landlord will receive a Monetary Order to recover this sum pursuant to s. 67 of the Act.

With regard to unpaid rent for February, 2012; In a month to month tenancy, if the tenancy is ended by the landlord for non-payment of rent, the landlord may recover any loss of rent suffered for the next month as a notice given by the tenant during the month would not end the tenancy until the end of the subsequent month. As the landlord has testified that the tenant was given a 10 Day Notice to End Tenancy on January 10, 2011 the landlord would be entitled to recover unpaid rent for February, 2012 as the earliest the tenant could have legally ended the tenancy if the Notice had been given by the tenant during January would be February 29, 2012. I further find the landlord was unable to mitigate her loss by attempting to re-rent the unit for February, 2012 as the landlord was unsure that the tenant had actually vacated the rental unit as no keys had been returned and the tenant has left some belongings in the rental unit. Consequently, I also find the landlord is entitled to recover a loss of rental income for February, 2012 to the sum of **\$1,750.00** pursuant to s. 67 of the *Act*.

With regards to the landlords claim for the unpaid Hydro account. I am satisfied that the Hydro is not included in the tenants rent. Therefore the tenant is responsible to pay the Hydro whether or not it is in the tenants name or the landlords. Consequently, I find the amount calculated by the landlord for the tenant's share of this Hydro bill is fair and award the landlord a Monetary Order to recover the unpaid Hydro to the sum of **\$416.08** pursuant to s. 67 of the *Act*.

As the landlord has been successful with their claim I find the landlord is entitled to recover the **\$50.00** filing fee from the tenant pursuant to section 72(1) of the *Act*. The landlord will receive a Monetary Order for the following amount:

Unpaid rent for December and January	\$2,150.00
Loss of income for February	\$1,750.00
Unpaid Utilities	\$416.08
Filing fee	\$50.00
Total amount due to the landlord	\$4,366.08

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$4,366.08**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

The landlord is at liberty to apply for any unpaid utilities after the next utility bill comes in for the period of the tenancy.

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 07, 2012.

Residential Tenancy Branch