



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 tenants for the cost of this application.

Service of the hearing documents, by the landlord to the tenants, was done in accordance with section 89 of the *Act*, sent via registered mail on February 06, 2012. Mail receipt numbers were provided by the landlord's in evidence. The tenants were 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 his evidence orally, in writing, and in documentary form. There was no appearance for the tenants, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession due to unpaid rent and utilities?
- Is the landlord entitled to a Monetary Order due to Unpaid rent and utilities?

Background and Evidence

The landlord testifies that this tenancy started on July 01, 2011. Rent for this unit is \$1,050.00 per month and is due on the first day of each month in advance.

The landlord testifies that the tenants failed to pay all the rent for January, 2012 leaving an outstanding balance of \$400.00. The tenants also failed to pay the third quarter's water bill of \$311.41. The landlord issued a 10 Day Notice to End Tenancy on January 23, 2012 which was posted to the tenants' door. This notice informs the tenants that they have five days to pay the outstanding rent and utilities, or dispute the notice or the tenancy will end on February, 05, 2012.

The landlord testifies that the tenants did not pay the outstanding rent for January or the outstanding water bill. The landlord testifies the tenants also failed to pay rent for February, 2012 on the day it was due and the fourth quarter water bill had also been received for the sum of \$264.00.

The landlord testifies the tenants did pay all the outstanding rent on February 16, 2012. The landlord agrees that his office accepted this payment but did not inform the tenants that the payment was accepted for use and occupancy only and did not reinstate the tenancy.

The landlord agrees that the tenants have not been given a copy of the forth quarter water bill and were not given a written demand for payment of either bill within 30 days.

The landlord seeks an Order of Possession and a Monetary Order to recover the outstanding water bills.

Analysis

I have carefully considered the landlords documentary evidence and affirmed testimony before me. With regard to the landlords application for an Order of Possession; when a landlord has served a tenant with a 10 Day Notice to End Tenancy a landlord and tenant can agree to re-instate the tenancy if the tenant pays all or some of the rent after the five days period has passed but before the tenant is required to vacate. I refer the parties to the Residential Tenancy Policy Guidelines #11 which states, in part, the question of waiver usually arises when the landlord has accepted rent or money payment from the tenant after the Notice to End Tenancy has been given. If the rent is paid for the period during which the tenant is entitled to possession, that is, up to the effective date of the Notice to End, no question of "waiver" can arise as the landlord is entitled to that rent.

If the landlord accepts the rent for the period after the effective date of the Notice, the intention of the parties will be in issue. Intent can be established by evidence as to:

- Whether the receipt shows the money was received for use and occupation only.
- Whether the landlord specifically informed the tenant that the money would be for use and occupation only, and
- The conduct of the parties.

In this matter the landlord agrees that the tenants paid the rent after the effective date of the Notice and agrees the landlord did not inform the tenants that this was accepted for use and occupancy only.

With regard to the landlords claim to recover unpaid utilities for the third and fourth quarter water bills, s. 46(6) of the *Act* requires that a landlord can only serve notice to end tenancy for unpaid utilities if the utilities are unpaid for more than 30 days after the landlord has served the tenant with a written demand letter. The landlord failed to provide any evidence that the requirements of s. 46(6) were met. Consequently, I dismiss the landlord's monetary claim for utilities as it is premature. The landlord is at

liberty to reapply for this portion of his claim after the requirements of s. 46(6) of the Act are met.

Consequently the landlord is not entitled to an Order of possession based on unpaid rent and utilities and his application is dismissed.

Conclusion

The landlord's application is dismissed.

The landlord is at liberty to reapply for unpaid utilities and is entitled to serve the tenants with a new 10 Day Notice to End Tenancy if the utilities remain unpaid after s. 46(6) of the Act has been met.

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 27, 2012.

Residential Tenancy Branch