



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, 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; for an Order permitting the landlord to keep all or part of the tenants security deposit; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the conference call hearing, gave their testimony and were given the opportunity to cross exam each other on their evidence. The landlord 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.

A previous hearing was held on January 12, 2011. At that hearing the tenant failed to attend and a decision and Order was issued in the tenant's absence. The tenant applied for a review of that decision and the review hearing was granted. The original decision was suspended until this hearing was conducted and a new decision is given to the parties in accordance with s. 81(3) of the *Residential Tenancy Act (Act)*.

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?
- Is the landlord entitled to keep all or part of the security deposit?

Background and Evidence

Both parties agree that this tenancy started on November 01, 2009. Rent for this unit was \$846.24 per month and was due on the first day of each month in advance. The tenant paid a security deposit of \$410.00 on December 02, 2009.

The landlord testifies that the tenant gave verbal notice to end her tenancy around November 01, 2011. The landlord states she informed the tenant that the Notice must be in writing. The tenant gave written notice to end the tenancy on November 05, 2011 effective on November 30, 2011. The landlord states she informed the tenant that this was late notice and the tenant would still be responsible for the rent for December, 2011.

The landlord states that she saw the tenant in the building in December and was not sure that the tenant had moved from the unit on November 30, 2011 as the tenant had not contacted the landlord. The landlord states she served the tenant with a 10 Day Notice to End Tenancy on December 02, 2010 due to unpaid rent of \$872.48 and unpaid utilities of \$125.64. The landlord states that she checked the tenants unit around Christmas time and saw some of the tenant's belongings in the unit. The landlord states in the New Year she checked the unit again and saw some furniture, and garbage but the tenant had removed her clothing. The landlord states as the tenant did not return the keys she has no idea when the tenant vacated the rental unit and therefore the landlord seeks to recover rent for December, 2010 and January, 2011. The landlord states they were also unable to schedule a move out inspection of the unit. The landlord states the unit was not re-rented until March 01, 2011.

The landlord states the tenant failed to pay her utilities to the City. The outstanding amount accumulated over several months. The landlord has provided a copy of the tenants rent ledger showing the amounts the landlord paid to the city on the tenant's behalf for Hydro. To date the tenant owes Hydro for March, 2010 of \$2.51, for May, 2010 of \$38.80, for August, 2010 of \$42.58 and for October, 2010 of \$41.75. The landlord seeks to recover the sum of \$125.64 in unpaid Hydro.

The landlord seeks an Order to keep the tenants security deposit to offset against unpaid rent and requests a Monetary Order for the outstanding balance.

The tenant disputes that she owes rent to the landlord. The tenant testifies that English is her second language and she did not know she had to give one clear months written Notice to end her tenancy. The tenant states she gave the landlord verbal notice to end her tenancy on November 01, 2010 and moved from the rental unit at the end of November, 2010. The tenant states she gave the landlord written Notice on November 03, 2010 after the landlord informed her that this was required.

The tenant states the Government pay her rent and they had already paid the rent for December on her new unit. The tenant states she could not therefore pay anything else to the landlord for December. The tenant states the landlord did not explain about giving written notice at the start of her tenancy. The tenant states she did return the keys to the landlord by leaving them in the mail box in the building. The tenant states she did remove all her furniture from the unit and only left a couple of things on the balcony.

The tenant disputes that she owes Hydro costs to the landlord. The tenant states she always paid her Hydro bill in full. The tenant agrees she has no documentary evidence to support this.

The landlord states that the lease agreement was also signed and initialled by the tenant including the section concerning notice to end tenancy. The landlord states by initialling this section of the agreement the tenant shows she understood about the

proper procedure to give notice to end a tenancy. The landlord states the tenant told the landlord that she had paid her hydro bill and when the landlord asked the tenant for receipts from the city to show it had been paid the tenant did not provide the receipts and the landlord had to pay the city the outstanding amounts.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I refer the parties to s. 45(1) of the *Act* which states:

A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

As both parties agree that the tenant did not provide written notice to end the tenancy until either November 3rd, 4th or 5th then it is my decision that the tenant has not provided proper notice to end the tenancy pursuant to s. 45 (1) of the *Act*.

Consequently, the landlord has established a claim for unpaid rent for December, 2010 to the sum of **\$846.24**.

With regards to the landlord's claim for unpaid rent for January, 2011 I have insufficient evidence before me that the tenant did not return the keys or move out of the rental unit at the end of November, 2010 as suggested by the landlord. The landlord must show how they have mitigated their loss by taking the required steps to establish whether or not the tenant did vacate the rental unit at the end of November, 2010 and I have no evidence from the landlord to support this. The landlord must also show how they attempted to mitigate their loss by advertising the unit for rent as soon as the tenant

provided written Notice to end the tenancy. The landlord has only stated that the unit was not re-rented until March 01, 2011 and has not shown what steps the landlord did take to re-rent the unit as quickly as possible in order to mitigate their loss pursuant to s. 7(2) of the Act. Consequently, the landlords claim for unpaid rent for January, 2011 is dismissed.

With regard to the landlords claim for unpaid Hydro; The tenant argues that she paid the Hydro bills in full however the landlords documentary evidence in the form of the rent ledger shows that a Hydro charge back was applied to the tenants account when the landlord had to pay the tenants Hydro bill to the city. Consequently, I find in favour of the landlords claim to recover the sum of **\$125.64** in unpaid Hydro.

As the landlord has been partial successful with their claim I find the landlord is entitled to recover the **\$50.00** filing fee from the tenant pursuant to s. 72(1) of the *Act*.

I Order the landlord to keep the tenants security deposit of \$410.00 in partial satisfaction of their claim and a Monetary Order has been issued to the landlord for the following amount:

Unpaid rent for December, 2010	\$846.24
Unpaid utilities	\$125.64
Filing fee	\$50.00
Less security deposit	(-\$410.00)
Total amount due to the landlord	\$611.88

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$611.88**. The order

must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

The previous Decision made on January 12, 2011 which was suspended pending this hearing is now set aside.

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: April 12, 2012.

Residential Tenancy Branch