



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC MNR MNDC

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for Cause, and a Monetary Order for unpaid rent and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

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 April 13, 2012. Mail receipt numbers were provided in the Landlord's evidence. Based on the Landlord's submission I find the Tenant has been sufficiently served notice of this proceeding in accordance with the *Act*.

The Landlord appeared at the teleconference hearing and gave affirmed testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Has the Tenant breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, has the Landlord met the burden of proof to obtain an Order of Possession and a Monetary Order as a result of that breach, pursuant to sections 55, 7, and 67 of the *Residential Tenancy Act*?

Background and Evidence

The Landlord affirmed she had entered into a fixed term tenancy agreement with the Tenant that began in August 2009 and switched to a month to month tenancy after July 31, 2011. Rent was payable on the first of each month in the amount of \$2,000.00 and on or before August 1, 2009 the Tenant paid \$1,000.00 as the security deposit.

The Landlord advised that she used to occupy the residence and when she moved out her neighbour's son agreed to rent the home. She confirmed she issued the Tenant a 1 Month Notice on March 28, 2012 and a 10 Day Notice on April 11, 2012. She had a conversation with the Tenant's father, neighbour to the rental residence, on April 30, 2012 when he confirmed his son had moved out and left the keys with him. She attended the rental unit, picked up the keys from the Tenant's father, and completed the move out inspection, in the absence of the Tenant, on May 1, 2012. She confirmed she has regained possession of the unit and has withdrawn her request for an Order of Possession.

The request for a monetary order pertains to unpaid utilities. The Landlord advised that she was informed she needed to issue a written demand for payment from the Tenant and that she is aware the Tenant has thirty days to pay. She confirmed she issued the Tenant a letter on March 15, 2012 demanding payment for utilities based on bills that would have been mailed to the Tenant as the utilities were still in the Tenant's name.

Analysis

I have carefully considered the aforementioned and the documentary evidence which included copies of the 1 Month Notice to End Tenancy for Cause dated March 28, 2012, the 10 Day Notice to End Tenancy for unpaid rent dated April 11, 2012, and Canada Post receipts.

The Landlord has withdrawn her application for an Order of Possession.

Based on the Landlord's testimony she issued the Tenant a written demand for payment of utilities on March 15, 2012 which is less than thirty days prior to making her application for dispute resolution. Therefore, I find that at the time the Landlord filed her application for dispute resolution on April 13, 2012, the payment for the written demand of utilities was not yet due. Accordingly I find the Landlord's application for monetary compensation for unpaid utilities to be premature and is therefore dismissed, with leave to reapply.

The Landlord has not succeeded with her application; therefore I find she must bear the burden of the cost to file this application.

Conclusion

The Landlord has withdrawn her request for an Order of Possession.

The Landlord's request for a Monetary Order is HEREBY DISMISSED, with leave to reapply.

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: May 02, 2012.

Residential Tenancy Branch