Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MND, MNR

Introduction

This hearing dealt with an application by the landlord for an order of possession and a monetary order. Both parties participated in the conference call hearing.

This claim was originally heard on April 30, 2012 by a different Dispute Resolution Officer who issued a decision on the same date. That decision was reviewed by the landlord and in a decision dated May 14, 2012, the April 30 decision was suspended and a new hearing was ordered.

Although the landlord applied for an order of possession, the parties agreed that the tenancy has long since ended. I therefore consider the claim for an order of possession to have been withdrawn.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began on or about May 15, 2010 and ended in January 2011. They further agreed that the tenants were obligated to pay $1,250.00 per month in rent.

The landlord seeks to recover rent for the months of December 2010, January 2011 and February 2011, claiming that the tenants paid no rent for those months. The landlord testified that on or about January 20, 2012, the tenants were served with a notice to end tenancy on which it was stated that they had failed to pay $1,250.00 which was due in the month of January. The landlord proceeded to obtain an order of possession and a monetary order for $1,250.00 for unpaid rent for January through the direct request process at the Residential Tenancy Branch. He testified that he did not seek an order for unpaid rent for December because he had been told he would be more likely to be successful if he limited his claim to just one month. The landlord claimed that he did not

discover that the tenants had vacated the rental unit until February 4, at which time it was too late to advertise the rental unit.

The tenants vehemently denied having received the notice to end tenancy and testified that their rent was paid in full through work they performed for the landlord. They testified that they told the landlord that they were vacating the rental unit but did not give him written notice. They testified that they moved into a local motel on January 21 and claimed that the landlord knew that they had moved out on that date.

The landlord seeks to recover $300.00 as the value of cedar trees in his yard which he claimed that the tenants destroyed. The tenants denied having caused damage to the trees.

The landlord seeks to recover $250.00 pursuant to an agreement in which the male tenant gave his written promise that he would "place $250.00 worth of dirt on [landlord's] property [address] before the end of our tenancy. If not completed I [tenant] will pay [landlord] $250.00." The tenant acknowledged that the dirt was not placed on the property, but testified that the dirt was intended to be part of a flower bed which he did not build because the landlord was concerned that it would destroy the lawn.

In his written submissions, the landlord mentioned that he had to perform cleaning at the end of the tenancy and suggested a rate of $20.00 per hour for 10 hours. No testimony was offered on this issue.

Analysis

As the landlord has already received a monetary order for January 2011 under a previous dispute resolution proceeding, I dismiss the claim for January's rent. As for the claim for December 2010 rent, it was open to the landlord to make a claim for those arrears together with his claim for rent for January, but he chose not to do so. The doctrine of *res judicata* prevents a party from splitting a claim into several parts when it can be recovered in one action. I find that because the landlord was aware of the December arrears when he made his claim in January, he is now barred from making a claim to recover those arrears as those two claims could have been brought together. I therefore dismiss the claim for December 2010 rent.

When the landlord applied for an order of possession pursuant to the direct request process, the decision shows that he submitted documentation showing that on January 20, 2011 he personally served the tenants with a 10 day notice to end tenancy for unpaid rent. The notice set the end of tenancy date at January 30, 2011. I accept that the tenants vacated the unit on January 21 and I find it more likely than not that they did

so pursuant to the notice to end tenancy. The landlord claimed that he did not discover that the tenants had vacated until February 4, but I find that he had an obligation to check the rental unit to determine whether the tenants were leaving and to schedule a time in which the parties could perform a condition inspection of the unit. He apparently did neither. I find that the tenancy ended on January 30, 2011 pursuant to the notice to end tenancy and that the landlord should have expected that the tenants would vacate by that date. If the landlord lost rental income in the month of February, I find that the loss occurred because of his own failure to act quickly to advertise the rental unit rather than because of any action of the tenants. I therefore dismiss the claim for February 2011 rent.

The tenancy agreement clearly shows that utilities are not included in the rent. Although the tenants claimed to have paid utilities for the period of time in which they occupied the unit, they provided no evidence to corroborate that claim and I find that they have not proven that they have satisfied that debt. Although the utilities pre-dated the claim for January rent and an order of possession, I do not consider the claim for their recovery to be barred as utility charges are not recoverable through the direct request process. I find that the tenants are liable for the $240.58 for natural gas for the period ending on December 1, 2010, which is the date of the meter reading shown on the invoice, and that the tenants are also liable for the $79.00 for natural gas for the period ending on December 31, 2010, which again is the date of the meter reading shown on the invoice. I award the landlord $319.58.

I find that the tenants are also obligated to satisfy the debt represented by the tenant's promissory note. The document does not state that the monies will only be paid under certain conditions; it simply states that monies will be paid if the dirt is not provided. As the tenants acknowledged that the dirt was not provided, I find that the tenants must pay the $250.00 and I award the landlord this sum.

The landlord provided no corroborating evidence to support his claim that additional cleaning was required and I dismiss that part of his claim.

Conclusion

The original decision dated April 30, 2012 was suspended until a new hearing had been completed. As the hearing is now complete and as my decision differs from the April 30 decision, I hereby order that the April 30, 2012 decision be set aside and of no force or effect.

The landlord has been awarded a total of $569.58 which represents utility charges and realization of the promissory note. I grant the landlord a monetary order under section

67 for that sum. This order may be filed in the Small Claims Division of the Provincial Court and enforced 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: June 12, 2012

Residential Tenancy Branch