



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenants: CNR O
For the landlord: OPR MNR MNSD MNDC FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”). The hearing began on May 28, 2012 and was adjourned to June 7, 2012 for continuation.

The tenants applied to cancel a notice to end tenancy and for more compensation for the lack of utilities; and to set off the rent and utilities owed from a previous monetary order granted to them.

The landlord applied for an order of possession for unpaid rent or utilities; authority to keep all or a part of the pet damage deposit or security deposit; a monetary order for unpaid rent or utilities; money owed or compensation for damage or loss and damage to the rental unit; and for recovery of the filing fee.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter(s)

The agents for the landlord testified that they were not served with a copy of the tenant’s application. Notice for both applications was considered. The tenants testified that they served a male with their application but could not provide a name. An agent for the landlord and the landlord disputed that they were served with any application from

the tenant. As a result, I dismiss the tenant's application with leave to reapply. Both parties agreed that notice of the landlord's application was completed and evidence was served, so the hearing proceeded with the landlord's application.

The tenants and the landlord referred to prior Decisions with respect to this tenancy which were reviewed. The landlord has been previously ordered to immediately put the hydro and gas utilities in her name. The landlord indicated that although she put the gas utility in her name, she has not put the hydro utility in her name or the name of an agent, contrary to the order of a Dispute Resolution Officer.

The landlord testified that a previous order of possession was received on March 27, 2012, but has not been enforced. The landlord testified that after the first hearing was adjourned, they received a portion of the May 2012, leaving a balance of \$575.00 owing for May 2012 rent.

The tenants testified that they were awarded a previous monetary order of \$3,600.00 based on an earlier Decision dated February 1, 2012. The tenants did not attend the reconvened hearing on June 7, 2012, however the hearing proceeded in accordance with Rule 6.5 of the Rules of Procedure. Rule 6.5 provides for a hearing to continue and a Decision to be made in a party's absence.

Issue(s) to be Decided

- Should the landlord be granted an order of possession for unpaid rent or utilities?
- Should the landlord be granted a monetary order to keep all or part of the security deposit?
- Should the landlord be granted a monetary order for money owed or compensation for damage or loss?
- Should the landlord recover the filing fee?

Background and Evidence

The landlord did not provide a copy of the tenancy agreement as evidence. It was agreed to during the hearing that monthly rent of \$1,100.00 is due on the third day of each month. Although prior Decisions have made a determination on utilities being 50% for the upstairs tenants and 50% for the downstairs tenants, I will not consider utilities as there was no documentary evidence provided by the landlords and the application by the landlord does not include details regarding their claim for utilities. The landlord

indicated that she has not put the hydro in her name as ordered by a Dispute Resolution Officer.

As mentioned above, the tenants testified that they were granted a monetary order of \$3,600.00 based on a Decision dated February 1, 2012. The tenants stated that they have not received any compensation from the landlord and would therefore like to deduct the rent owed from the monetary order.

The landlord states that rent of \$575.00 remains owing for May 2012, and \$1,100.00 remains owing for June 2012, for a total of \$1,675.00 in unpaid rent. The landlord described various amounts owing for utilities but did not have a written tenancy agreement or utility bills submitted as documentary evidence for this hearing. The landlord did not provide any evidence, documentary or otherwise, regarding the portion of May 2012 rent received.

Analysis

Based on the oral testimony and documentary evidence before me, I find the tenants have a monetary order of \$3,600.00 owing from a prior Decision dated February 1, 2012.

Section 72(2)(a) of the *Act* states:

Director's orders: fees and monetary orders

72 (1) The director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

(2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

(a) in the case of payment from a landlord to a tenant, from any rent due to the landlord, and

(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

Section 72(2)(a) of the *Act* permits the tenants to deduct rent due from an outstanding monetary order. I find, therefore, that there is no rent owing and that a credit still

remains for the tenants. As a result of the above, I cancel the landlord's notice for unpaid rent.

I find that the \$575.00 owing for May 2012 and \$1,100.00 owing for June 2012 rent, may be deducted from the \$3,600.00 monetary order leaving a balance owing to the tenants of **\$1,925.00**. I also find that by accepting the May 2012 rent without a receipt for use and occupancy, the earlier order of possession is of no force and effect and the tenancy, therefore, continues until ended in accordance with the *Act*.

Given the above, I find the landlord has not proven their claim on the balance of probabilities and is, therefore, not entitled to the recovery of the filing fee.

Conclusion

I dismiss the landlord's application for unpaid rent; cancel the Notice for unpaid rent; and I order the landlord to deduct the remaining balance owed to the tenants of **\$1,925.00** from future rent. I grant the landlord leave to reapply for unpaid utilities after the hydro is changed into the name of the landlord or an agent for the landlord and provided as proof with any future claim for utilities.

As the landlord was not successful with their application, I dismiss their claim for recovery of the filing fee.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 11, 2012

Residential Tenancy Branch