



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to an application made by the landlord for an Order of Possession for unpaid rent or utilities; for a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of this application.

The hearing did not conclude on its first day and was adjourned to allow the tenants an opportunity to review evidence provided by the landlord.

The landlord and both tenants attended the conference call hearing on both days. The tenants stated that the evidence provided by the landlord has not been received by the tenants, but the tenants do not oppose inclusion of that evidence. The parties gave affirmed testimony and were given the opportunity to cross examine each other on the evidence provided and testimony given, all of which has been reviewed and is considered in this Decision.

During the course of the hearing the landlord withdrew the claim against one of the tenants, A.F. The hearing continued in the presence of that tenant, however, the application is solely against the other tenant, A.S.J.C.

Also, during the course of the hearing the landlord withdrew the application for an Order of Possession.

Issue(s) to be Decided

- Is the landlord entitled to a monetary order for unpaid rent or utilities?
- Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Is the landlord entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

Background and Evidence

This fixed term tenancy began on June 1, 2011 and expired on December 1, 2011 and then reverted to a month-to-month tenancy. Rent in the amount of \$1,250.00 per month was payable in advance on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit in the amount of \$600.00 as well as a utility deposit in the amount of \$200.00; the landlord stated that the tenant wanted the landlord to have the utilities in the landlord's name, which was agreed to so long as the landlord had a deposit from the tenant in case the utility bills were not paid to the landlord by the tenant.

The landlord further testified that the tenant failed to pay rent in the amount of \$1,250.00 for the month of April, 2012, and the landlord had sent the tenant a text message asking the tenant to pay the utility bill. By that point in the tenancy the relationship of the parties had broken down so that the parties were not speaking. The tenant responded saying that the landlord could take the amount from the \$200.00 deposit that the landlord held.

The landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which was provided for the hearing. The landlord testified that the tenant was served with the notice by posting it to the door of the rental unit on April 3, 2012. The notice contains an expected date of vacancy of April 16, 2012 and states that the tenant failed to pay rent in the amount of \$1,250.00 that was due on April 2, 2012 and failed to pay utilities in the amount of \$264.00 following written demand on April 2, 2012. The landlord provided a copy of a Fortis Natural Gas bill in the amount of \$269.22 covering the period from December 30, 2011 to February 1, 2012, and the billing date is February 1, 2012. The landlord also provided a copy of a letter from Fortis Natural Gas dated April 2, 2012 addressed to the landlord confirming that the final balance on the bill was \$144.97 and a payment of \$145.00 had been received. The landlord further testified that the Fortis Natural Gas bill for \$144.97 was provided as evidence for this hearing, but no such document exists in the file.

The account number on the letter is the same account number indicated on the Fortis Natural Gas bill dated February 1, 2012. The landlord testified that the tenant owes both amounts, but the landlord rounded the amounts off and claimed \$408.00 on the Landlord's Application for Dispute Resolution.

The landlord also testified that the tenant has not provided the landlord with a forwarding address in writing.

The tenant testified that the furnace didn't work for the months of November and December, 2011 or for the months of January or February, 2012. The furnace was finally fixed in March, 2012 but broke again. The landlord had gone to Ontario without leaving an emergency phone number, but left a spare furnace for the tenant to have connected if the repair didn't work. The tenant attempted to have the newer furnace installed, but was unsuccessful.

The tenant also testified that the landlord knew that the furnace was not working properly and replaced the thermostat. The furnace then worked intermittently, and the landlord was aware of the on-going difficulties.

Therefore, since the furnace worked intermittently for that 4 month period, the tenant refused to pay the gas bill, and due to having no furnace, the tenant did not pay rent for April, 2012.

The tenant moved from the rental unit on or about May 1, 2012. An application for dispute resolution was not filed by the tenant because the tenant did not have the funds to pay the filing fee.

The tenant was extremely rude during the conference call hearing.

Analysis

The Residential Tenancy Branch Rules of Procedure state as follows:

8.7 Interruptions and inappropriate behaviour at the dispute resolution proceeding. Disrupting the other party's presentation with questions or comments will not be permitted. The Dispute Resolution Officer may give directions to a party, to a party's agent or representative, a witness, or any other person in attendance at a dispute resolution proceeding who presents rude, antagonistic or inappropriate behaviour. A person who does not comply with the Dispute Resolution Officer's direction may be excluded from the dispute resolution proceeding and the Dispute Resolution Officer may proceed with the dispute resolution proceeding in the absence of the excluded party.

During the course of this hearing, the tenant was rude, yelling, antagonistic, and acted inappropriately for a hearing. The tenant was not given directions with respect to his behaviour during the hearing only for the reason that any such direction would obviously antagonize the tenant further. If the tenant had continued with such behaviour, the

tenant would certainly have been disconnected from the conference call hearing. The behaviour of the tenant is mentioned in this Decision to provide the tenant with the expected behaviour during such a hearing, and that for future reference, any similar behaviour will likely result in the hearing being conducted in the tenant's absence, meaning that the tenant would not be permitted to present testimony to substantiate any defence to a landlord's claim, or to substantiate any claims made by the tenant.

Firstly, the *Residential Tenancy Act* states that a tenant must pay rent when it is due under the tenancy agreement even if the landlord does not comply with the *Act*. Therefore, whether or not the tenant felt justified in not paying rent, I find that the tenant has not complied with the *Act*, and the landlord is entitled to rent in the amount of \$1,250.00 for the month of April, 2012.

I further find that the tenant is liable for the payment of rent for the month of May, 2012. The landlord served the tenant with a notice to end the tenancy effective April 16, 2012 but the tenant did not leave the rental unit by that date. I refer to Residential Tenancy Policy Guideline 3 which states that failure to pay rent when it is due is considered to be a fundamental breach of a tenancy agreement. It further states that amounts awarded to a landlord for that breach are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. If the tenant had not breached the agreement, but had given notice to the landlord to end the tenancy, the notice could not have been effective until the end of May, 2012, and therefore, I find that the landlord has established a claim as against the tenant in the amount of \$1,250.00 for the month of May, 2012.

With respect to the landlord's claim for unpaid utilities, firstly, the *Act* states that a landlord may not require or accept more than one security deposit in respect of a tenancy agreement, but the landlord may require a pet damage deposit. In this case, the parties agree that the landlord collected a utility deposit in the amount of \$200.00 that has not been returned to the tenant. The *Act* does not set out any consequences for a landlord collecting more than half a month's rent for a security deposit, except that any deposit collected by the landlord contrary to the *Act* may be deducted from rent owed by the tenant. I have reviewed the Fortis Gas bill provided by the landlord, and I find that the tenant is responsible for payment of it, and I find that the landlord has established a claim for \$269.22, less the \$200.00 deposit. I further accept the testimony of the landlord that the final bill of \$144.97 was for this rental unit during the course of the tenancy, and the landlord has established a claim for that bill.

The *Act* also requires a landlord to provide and maintain a rental unit in a state of decoration and repair that complies with the health, safety and housing standards

required by law, and makes it suitable for occupation by a tenant. I have no application before me by the tenant with respect to the landlord's failure to comply with the *Act*, and therefore, I cannot make any orders reducing rent or pardoning the tenant from paying rent. The tenant is at liberty to make an application for dispute resolution. If the tenant cannot afford to pay the filing fee, the tenant may apply to have the fee waived.

In summary, I find that the landlord has established a claim as against the tenant in the amount of \$2,500.00 for rent for the months of April and May, 2012; \$214.19 for unpaid utilities and recovery of the \$50.00 filing fee for the cost of this application. I order the landlord to keep the security deposit of \$600.00 in partial satisfaction of the claim, and I grant the landlord a monetary order for the balance of \$2,164.19.

Conclusion

For the reasons set out above, the landlord's application as against the tenant, A.F. is hereby dismissed without leave to reapply.

The landlord's application for an Order of Possession is hereby dismissed as withdrawn.

I hereby order the landlord to keep the security deposit in the amount of \$600.00 and I grant the landlord a monetary order pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,164.19.

This order is final and binding on the parties and may be enforced.

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 7, 2012.

Residential Tenancy Branch