



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant – CNR, OLC

For the landlord – OPR, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for dispute resolution. The tenant has applied to cancel the Notice to End Tenancy for unpaid rent and seeks an Order for the landlord to comply with the *Residential Tenancy Act (Act)*. The landlord has applied 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 tenant's 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 sworn testimony and were given the opportunity to cross examine 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, and the parties were permitted to provide additional evidence after the hearing had concluded. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession for unpaid rent and utilities?
- Is the landlord entitled to a Monetary Order to recover unpaid rent and utilities?
- Is the landlord entitled to keep the tenants security deposit?
- Is the tenant entitled to cancel the Notice to End Tenancy?

- Is the tenant entitled to an Order for the landlord to comply with the *Act*, regulations or tenancy agreement?

Background and Evidence

The landlord testifies that this tenancy started on July 23, 2011. The tenant disputes this and testifies that the tenancy started on August 01, 2011 although the landlord did allow the tenant to move his belongings into the unit in July, 2011. The parties do agree that rent for this unit is \$1,050.00 per month plus \$150.00 per month for utilities. The landlord did not put a written tenancy agreement in place but terms were agreed verbally. The tenant paid a security deposit of \$525.00 on July 23, 2011.

The landlord testifies that the tenant owes rent of \$450.00 for June, 2012. The landlord also testifies that the utility bills were more than \$150.00 each month so the landlord and tenant had agreed that the tenant would pay the shortfall at the end of the first year of the tenancy. The landlord states the tenant owes a sum of either \$715.03 or \$666.00 in the additional amount of utilities consumed. The landlord testifies that the tenant has paid \$150.00 each month for utilities as agreed except for June, 2012.

The landlord testifies that the tenant was served with a 10 Day Notice to End Tenancy on June 07, 2012. This notice has an effective date of June 17, 2012 and was posted to the tenant's door. The Notice informs the tenant that he has five days to pay the outstanding rent and utilities or dispute the Notice.

The landlord seeks an Order of Possession effective as soon as possible and seeks a Monetary Order to recover unpaid rent and utilities. The landlord also seeks an Order to keep the tenants security deposit and recover the filing fee for this proceeding.

The tenant disputes the landlords claim. The tenant testifies that he was late paying all his rent and utilities for June but did make a payment on June 28, 2012 by electronic

transfer into the landlord's bank account of \$750.00. The tenant testifies that he made another payment into the landlord's bank account on June 28, 2012 of \$1,200.00. The tenant testifies that the landlord accepted these payments and no other rent or utilities are owed.

The tenant queries the amount the landlord claims is owed or utilities. The tenant testifies that the agreement was for \$150.00 per month for utilities. The tenant states the landlord does not always provide a copy of the utility bills to the tenant and now the landlord seeks to recover any shortfall in the amount of the bill and the \$150.00 the tenant agreed to pay. The tenant testifies that he did agree to pay any shortfall in the collective utility payments at the end of the first year of the tenancy which would be August 01, 2012. The tenant testifies that to date he has paid \$12,000.00 in rent and \$1,800.00 for utilities since the start of his tenancy.

The tenant seeks an Order for the landlord to comply with the *Act* with regard to the utilities as the landlord is attempting to increase the amounts agreed upon and by doing so this is in effect an additional rent increase. The tenant also seeks an Order for the landlord to comply with the *Act* with regard to having a written tenancy agreement.

Analysis

With regard to the landlords application for an Order of Possession; when a landlord has served a tenant with a 10 Day Notice to End Tenancy a landlord and tenant can agree to re-instate the tenancy if the tenant pays all or some of the rent after the five days period has passed but before the tenant is required to vacate. I refer the parties to the Residential Tenancy Policy Guidelines #11 which states, in part, the question of waiver usually arises when the landlord has accepted rent or money payment from the tenant after the Notice to End Tenancy has been given. If the rent is paid for the period during which the tenant is entitled to possession, that is, up to the effective date of the Notice to End, no question of "waiver" can arise as the landlord is entitled to that rent.

If the landlord accepts the rent for the period after the effective date of the Notice, the intention of the parties will be in issue. Intent can be established by evidence as to:

- Whether the receipt shows the money was received for use and occupation only.
- Whether the landlord specifically informed the tenant that the money would be for use and occupation only, and
- The conduct of the parties.

In this matter the landlord agrees that the tenant has paid some of the rent after the effective date of the Notice and the landlord agrees that she did not inform the tenant that this was accepted for use and occupancy only and did not reinstate the tenancy. Consequently, I find from the evidence presented that the landlord has reinstated the tenancy and the landlord application for an Order of Possession is therefore dismissed.

With regard to the landlords claim for unpaid rent and utilities; I find from the evidence presented that the tenant has paid all outstanding rent and utilities including rent and utilities for June and July, 2012. Consequently, I dismiss the landlord application for a Monetary Order.

With regards to the landlords application to keep the tenants security deposit; as it has been established that there is no outstanding rent or utilities at this time and the tenancy will continue I dismiss the landlord's application to keep the security deposit.

As the landlord has been unsuccessful with her claim I find the landlord must bear the cost of filing her own application.

The tenant's application to cancel the 10 Day Notice is therefore upheld.

With regard to the tenants application seeking an Order for the landlord to comply with the *Act*; I refer the parties to s. 13 of the *Act* which states:

13 (1) A landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004.

(2) A tenancy agreement must comply with any requirements prescribed in the regulations and must set out all of the following:

- (a) the standard terms;
- (b) the correct legal names of the landlord and tenant;
- (c) the address of the rental unit;
- (d) the date the tenancy agreement is entered into;
- (e) the address for service and telephone number of the landlord or the landlord's agent;
- (f) the agreed terms in respect of the following:
 - (i) the date on which the tenancy starts;
 - (ii) if the tenancy is a periodic tenancy, whether it is on a weekly, monthly or other periodic basis;
 - (iii) if the tenancy is a fixed term tenancy,
 - (A) the date the tenancy ends, and
 - (B) whether the tenancy may continue as a periodic tenancy or for another fixed term after that date or whether the tenant must vacate the rental unit on that date;
 - (iv) the amount of rent payable for a specified period, and, if the rent varies with the number of occupants, the amount by which it varies;
 - (v) the day in the month, or in the other period on which the tenancy is based, on which the rent is due;
 - (vi) which services and facilities are included in the rent;

(vii) the amount of any security deposit or pet damage deposit and the date the security deposit or pet damage deposit was or must be paid.

(3) Within 21 days after a landlord and tenant enter into a tenancy agreement, the landlord must give the tenant a copy of the agreement.

Consequently, I find the landlord has not prepared, in writing, a tenancy agreement outlining the terms of that agreement. S. 14(2) of the *Act* states:

A tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment.

I therefore Order the landlord to prepare a written tenancy agreement in accordance with the terms of the verbal agreement.

With regard to the tenants claim that the landlord has attempted to collect additional utilities before the end of the first year of the tenancy; the parties both agree that the tenant would pay any shortfall in utilities at the end of the first year. As the landlord is attempting to enforce this now I find the landlord must adhere to the original terms of the verbal agreement and must provide the tenant with copies of all the utility bills for the first year of the tenancy and a written demand for payment of any shortfall between the bills and the amount paid by the tenant each month of \$150.00.

Conclusion

The tenant's application is allowed. The 10 Day Notice to End Tenancy for unpaid rent and utilities dated June 07, 2012 is cancelled and the tenancy will continue.

I HEREBY ORDER the landlord to comply with s. 13 of the Act and prepare a written tenancy agreement in accordance with the verbal terms agreed upon at the start of the

tenancy. I further Order the landlord to ensure she complies with s. 46(6) with regard to utilities payments.

The landlord's application is dismissed in its entity without 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: July 04, 2012.

Residential Tenancy Branch