



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to an application made by the landlords for an Order of Possession for cause; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

One of the named landlords attended the conference call hearing and gave affirmed testimony. The landlord testified that the tenants were served with the evidence, Landlord's Application for Dispute Resolution and notice of hearing by personally handing the package to one of the tenants on July 14 or 15, 2012 and the other tenant was personally served on or about the following Monday. Neither of the tenants attended the hearing.

During the course of the hearing the landlord testified that the tenants moved from the rental unit on or about July 29, 2012, and therefore, the landlords' application for an Order of Possession is withdrawn.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

The landlord testified that this month-to-month tenancy began on August 1, 2010 and ended on July 29, 2012 after the landlords had issued a 1 Month Notice to End Tenancy for Cause to the tenants on July 2, 2012. Rent in the amount of \$1,500.00 per month was payable in advance on the 1st day of each month, although there is no written tenancy agreement. No security deposit or pet damage deposit was collected by the landlord before or during the tenancy.

The landlord further testified that the tenants owe utilities for natural gas and hydro. The landlord pays the utilities, and both are in the name of the landlords, and copies of the utility bills are presented to the tenants when received. The tenants were not presented with recent bills because they had not been received prior to the date the tenants moved out of the rental unit, and some of the bills claimed have not yet been received by the landlord.

The landlords reside in the same building as the rental unit, and the landlord testified that upon attending the rental unit on July 30, 2012 the door was open and the keys to the rental unit were located on the counter; the tenants had moved out.

The landlord claims \$33.23 for a Fortis Gas bill which covers the period of June 6, 2012 to July 6, 2012. A copy of the bill was given to the tenants on or about July 20, 2012. The landlord has also estimated \$35.00 for the next Fortis Gas bill to cover the period of July 7 to August 6, 2012, but the landlord has not provided any copies of any bills in order to substantiate the claim. The landlords further claim \$90.00 as an estimate for hydro usage from June 6 to August 6, 2012, but have provided no evidence of previous bills or usage. The landlord testified that an Information Officer at the Residential Tenancy Branch told the landlord to estimate \$500.00 on the Landlord's Application for Dispute Resolution but did not tell the landlord that evidence to substantiate any claim would be required for this hearing.

Analysis

In order to be successful with a claim for a monetary order, the onus is on the claiming party to provide evidence that the debt is actually owing and provide evidence of the amount of the debt. In this case, the landlord and tenant did not enter into a written tenancy agreement, and the tenants did not attend at the hearing to agree or deny that utilities were the responsibility of the tenants. The landlord also failed to provide a copy of each of the bills claimed. The *Residential Tenancy Act* states that a landlord may treat unpaid utilities as unpaid rent 30 days after a written demand for the payment of utilities is given to the tenants. I accept that the landlord gave a copy of the first bill claimed, but did not provide a copy for this hearing. Further, the claim for an estimated amount of utilities to the end of the tenancy may normally be reasonable, but the landlord has failed to provide any evidence of how the landlord estimated the bills that have not yet been received. The landlord testified that the estimate was from previous bills, but did not provide the amounts of those previous bills, the dates, or what the bills indicated for usage by the tenants. I cannot order the tenants to pay an amount to the landlord that has not been proven. Simply claiming it in an application and providing oral testimony of that claim is not sufficient.

With respect to the issue of service, the landlord was unable to provide accurate information as to when the tenants were served with the Landlord's Application for Dispute Resolution and notice of hearing documents. The *Residential Tenancy Act* requires a party to serve the application within 3 days of making it. The landlord testified that it was within 3 days, but does not recall the exact date that either tenant was served. Therefore, I am not entirely satisfied that the tenants have been served in accordance with the *Residential Tenancy Act*.

Conclusion

For the reasons set out above, the landlords' application for an Order of Possession is hereby dismissed as withdrawn.

The landlords' application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby dismissed 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: August 03, 2012.

Residential Tenancy Branch