



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call in repose to the landlords application 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 tenants security deposit; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord's agent attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other and witness 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 tenant was 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.

At the outset of the hearing the landlord's agent advised that the tenant is no longer residing in the rental unit, and therefore, the landlord withdraws the application for an Order of Possession.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent and utilities?
- Is the landlord entitled to keep the tenants security deposit?

Background and Evidence

Both parties agree that this month to month tenancy started on March 01, 2011 and ended on July 28, 2012. Rent for this unit was \$782.25, due on the first day of each month in advance. The tenancy agreement indicates that the tenant must pay 25 percent of the water and Hydro utility bills. The tenant paid a security deposit of \$375.00 on February 09, 2011.

The landlord's agent testifies that the tenant gave verbal notice to end the tenancy on June 29, 2012 indicating that the tenant would be vacating the rental unit at the end of July. The landlord's agent testifies that she informed the tenant that the tenant would need to put this in writing or an e-mail would suffice. The landlord's agent testifies that she received an email giving Notice on July 01, 2012. This e-mail indicated that the tenancy would end on June 30, 2012. The landlord's agent testifies that this date must have been an error as the tenancy did not end until July 28, 2012. The landlord's agent states that as the tenant did not give the required notice to end the tenancy the landlord claims a loss of rent for August, 2012 of \$782.25.

The landlord's agent testifies that the unit was advertised for rent on two internet sites and a couple of unsuccessful viewings have taken place so far. However the unit remains unrented to date.

The landlord's agent testifies that the tenant failed to pay all the rent for July, 2012. The tenant paid \$432.50 on June 29, 2012 leaving an unpaid balance for July of \$349.75. The landlord's agent testifies that the tenant also failed to pay the tenants share of the water bill of \$25.00. The landlord's agent testifies that there is a verbal agreement between the landlord and the tenant that while the landlord is away for the summer months the tenant will pay 50 percent of the Hydro and water bills. The landlord's agent testifies that the tenant has been paying this 50 percent share until this water bill was presented to the tenant. The landlord seeks to recover the sum of \$25.00 from the tenant for the March 31 to May 25 water bill. The landlord has provided a copy of the

water bill and calculations for the tenants 50 percent share of this bill. The landlord's agent has also provided the email correspondence to and from the tenant requesting payment of this bill.

The landlord's agent testifies that the tenant was served with a 10 Day Notice to End Tenancy on July 05, 2012. This notice had an effective date of July 18, 2012 and states the tenant owes \$349.25 in unpaid rent and \$25.00 in unpaid utilities. The tenant had five days to pay the rent or dispute the Notice and the tenant failed to do either and moved from the rental unit on July 28, 2012

The landlord's agent has also filed an application to recover additional utilities of \$59.20 for Hydro and \$33.00 for water. The landlord's agent testifies that the landlord has not yet received these bills so the amounts claimed have been estimated from previous bills.

The landlord seeks a Monetary Order for \$50.00 comprised of a \$25.00 late fee for the rent for July and the water bill. The landlord also seeks to recover the \$50.00 filing fee from the tenant. The landlord seeks an Order to keep the tenants security deposit in partial satisfaction of this monetary claim.

The tenant disputes the landlords claim. The tenant testifies that the only thing he is guilty of is not knowing the Residential Tenancy Act. The tenant states he has always had a respectful and amicable relationship with the landlord and all matters have been dealt with verbally. The tenant testifies that when he verbally told the landlords agent on June 29, 2012 that he was moving out the landlords agent told the tenant it was fine and to just follow up with an e-mail. The tenant testifies that he sent the landlord's agent an e-mail providing written notice but the e-mail was bounced back a day later. The tenant states as things had always been verbally agreed he did not think it mattered.

The tenant testifies that after the e-mail had bounced back it eventually went a day later. The tenant testifies that he then wrote to the landlord on June 30, 2012 giving notice to

end the tenancy and left this letter under the landlord's door. The tenant testifies that he paid the sum of \$432.50 to the landlord on June 29, 2012. This included partial rent and the sum of \$25.25 for the water bill. The tenant states he assumed the landlord would keep the tenants security deposit to make up the balance of rent.

The tenant testifies that he did not have a verbal agreement to pay 50 percent of the utility bills when the landlord was away. The tenant agrees he has been doing this but now realizes that he should have only been paying 25 percent. The tenant has provided a copy of his bank deposit showing the sum of \$432.50 was paid on June 29, 2012.

The landlord's agent testifies that the tenant did not leave a letter in the landlord's door as the landlord's agent goes to the landlord's house each day and no letter has ever been received from the tenant. The landlord questions the tenant's creditability and states if the tenant had left a letter on June 30, 2012 why would the tenant also have sent an e-mail on July 01, 2012.

The tenant states why would the landlord put the tenant in this position for one day of tardiness after having a good relationship with the tenant for the length of the tenancy.

The tenant calls his witness. The witness is the tenant's wife. The witness testifies that she was present on the day the tenant gave verbal notice to the landlord's agent. The witness testifies that the tenant told the landlord's agent that they were ending the tenancy at the end of the month and the landlord's agent said she would like the tenant to put it in an e-mail and everything was fine. The witness testifies that the tenant had told her that he had sent an e-mail to the landlord's agent but it had bounced back because of the area they live in. The witness testifies that she remembers seeing the tenant with a letter and the tenant went downstairs and put it under the landlord's door with the rest of the landlord's mail. The witness recalls that this letter was a notice ending the tenancy and informed the landlord that they were going to clean the unit at the end of the tenancy. The witness testifies that this letter was delivered on June 30, 2012.

The landlord's agent cross examines the witness and asks the witness what time the letter was delivered and where was it left. The witness replies around 5.00 p.m. after the tenant had finished work. The letter was put under the door. The landlord's agent asks the witness if they were cleaning all day how was the tenant at work. The witness replies that she was cleaning all day in stages, when they got to the house they put the letter in the door handle.

The tenant testifies that the letter was put in the door handle as letters could not fit under the door

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties and witness. With regard to the landlords claim for unpaid rent for July 2012; a tenant is not entitled to apply a security deposit to any unpaid rent as a security deposit is an amount that is held in trust by the landlord until the tenancy ends. Consequently, I find the tenant paid the sum of \$432.50 on June 29, 2012 leaving an unpaid balance of **\$349.75**.

With regard to the landlords claim for unpaid utilities; I have reviewed the tenancy agreement and find the tenant and landlord have agreed that the tenant's share of the utilities is 25 percent. The landlord's agent argues that there was also a verbal agreement for the tenant to pay 50 percent of the utilities when the landlord was away. The tenant disputes this and by their very nature verbal agreements are difficult to prove when one it becomes one person's word against that of the other. Consequently it is my decision that the agreement made between the parties in the form of the tenancy agreement stands and the tenant's share of utilities is 25 percent. I therefore find the tenant's share of this water bill for the period of March 31 to May 25, 2012 is **\$12.50**.

With regard to the landlords claim for unpaid rent for August due to insufficient notice; I refer the parties to the *Residential Tenancy Act* s. 45(1) which states:

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

The tenant has argued that he did send the landlord an email as requested by the landlord which was bounced back and was not then delivered until July 01, 2012. The tenant also argues that he left a written notice to the landlord in the landlords door, however the tenant and the tenants witnesses testimony has some discrepancies in it where they both at first said a letter was left under the door and then later changed this to having left the letter in the door handle. The tenant also stated that he could not understand the landlord's position on this due to one day of tardiness. The landlord's agent argues that no such letter was left on June 30, 2012.

Due to the discrepancies in the tenants and his witness's testimony I find I can put little weight on the tenant's claim that written notice was given to the landlord on June 30, 2012. Although the tenant has since provided a copy of this letter it carries little weight as to when or if it was delivered to the landlord.

Therefore I find the tenant did not comply with s 45 (1) of the *Act* in providing one clear months written notice to end the tenancy and find the landlord is entitled to recover a loss of rental income for part of August. 2012. However as the landlord still has the rental unit advertised for rent there is still opportunity for the unit to be rented for a period of time in August. Consequently, I limit the landlords claim for loss of rent to

August 15, 2012 to the sum of **\$378.62**. If the rental unit remains unrented for the remainder of August the landlord is at liberty to reapply for a loss of rent from August 15 to August 31, 2012.

The landlord has applied for late fees of \$25.00 for the rent for July and \$25.00 for the late water bill. I refer the parties to the Residential Tenancy Regulations s. 7(1)(d) and s. 7(2) which states:

7 (1) A landlord may charge any of the following non-refundable fees:

(d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;

(2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

I have reviewed the tenancy agreement provided in evidence and find there is no provision in this tenancy agreement for the landlord to charge late fees to the tenant. Therefore this section of the landlord's application is dismissed without leave to reapply.

With regard to the landlords claim for additional Hydro and water bills which have been estimated by the landlord; a landlord is required to provide evidence of the actual amount claimed and with regard to utility bills the landlord must provide a copy of the bills to a tenant with a written demand for payment within 30 days of any bills being received by the tenant. Consequently I find the landlord has not yet received these utility bills and has not passed them onto the tenant with a written demand for payment. This section of the landlords claim is therefore premature and is dismissed with leave to reapply.

I Order the landlord to retain the security deposit of **\$375.00** pursuant to s. 38(4)(b) of the Act

As the landlord has been partially successful with this claim I find the landlord is entitled to recover the **\$50.00** filing fee from the tenant pursuant to section 72(1) of the *Act*.

A Monetary Order has been issued to the landlord for the following amount:

Unpaid rent for July	\$349.75
Unpaid utilities	\$12.50
Loss of rent for August	\$378.62
Subtotal	\$740.87
Plus filing fee	\$50.00
Less security deposit	(-\$375.00)
Total amount due to the landlord	\$415.87

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$415.87**. The order must be served on the respondent and is enforceable through the Provincial Court 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: August 08, 2012.

Residential Tenancy Branch