



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, 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, and to recover the filing fee from the tenants for the cost of this application.

An agent for the landlord company attended the conference call hearing, provided evidentiary material prior to the hearing, and advised that the application as against the first named tenant is withdrawn. Neither of the tenants attended the hearing. The landlord provided evidence of having mailed the Landlord Application for Dispute Resolution and notice of hearing documents by registered mail to the other named tenant and testified that the documents were sent on August 17, 2012, and I find that the tenant has been served in accordance with the *Residential Tenancy Act*.

All evidence and testimony provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent or utilities?
Is the landlord entitled to a monetary order for unpaid rent or utilities?

Background and Evidence

The landlord's agent testified that this fixed term tenancy began on October 1, 2010 and expired on March 31, 2011 and then reverted to a month-to-month tenancy. The tenant still resides in the rental unit. Rent in the amount of \$1,000.00 was originally payable under the tenancy agreement but was increased to \$1,023.00 effective October 1, 2011. A copy of the tenancy agreement was provided for this hearing. On September 9, 2010 the landlord collected a security deposit from the tenant in the amount of \$500.00 which is still held in trust by the landlord. A separate parking lease was signed by the parties wherein the tenant agreed to pay \$25.00 per month for parking.

The landlord's agent further testified that rent was paid by way of a pre-authorized debit however the tenant's financial institution returned the debit for April, 2012 for insufficient funds. The tenant paid the landlord the sum of \$1,048.00 by cheque, which was also returned N.S.F. The landlord had requested \$1,048.00, being \$1,023.00 for rent and \$25.00 for a late payment fee. The tenant then paid by cheque again the sum of \$1,100.00, being \$1,048.00 plus a late payment fee of \$25.00 and \$25.00 for parking. The tenant then paid the landlord \$250.00 by way of money order on June 21, 2012 and an additional \$400.00 on September 7, 2012. The landlord's agent testified that all rents for May through September, 2012 have been paid.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on July 14, 2012 by posting it to the door of the rental unit on that date. A copy of the notice was provided for this hearing, and it is dated July 14, 2012 and contains an expected date of vacancy of July 26, 2012. The notice states that the tenant failed to pay rent in the amount of \$821.00 that was due on July 1, 2012. When questioned about the monetary amount contained in the notice, the landlord's agent testified that the rental amount was \$1,023.00, parking was due at \$25.00, the tenant paid \$250.00, and the landlord added \$25.00 for N.S.F. and late fees, although the tenancy agreement does not specify a penalty for late payment of rent, and no evidence of a banking fee charged to the landlord was provided. The \$400.00 payment was received after the notice to end tenancy was served.

The landlord's agents did not issue any receipts for the payments, and did not provide the tenant with any written document or advise the tenant that the payments were being accepted for use and occupancy only.

Analysis

In the circumstances I find that the tenant is in arrears of rent, however, not for the amount claimed by the landlord. Rent is \$1,023.00 and parking is \$25.00. The tenant has paid \$650.00 of that amount, and the landlord is owed \$398.00.

The *Residential Tenancy Act* and regulations permit a landlord to charge a late fee of not more than \$25.00 if that provision is contained in the tenancy agreement, and to a fee charged by a financial institution for a returned cheque. The tenancy agreement in this case does not provide for a late fee and the landlord has not provided any evidence of the amount, if any, that the landlord's financial institution charged against the landlord's account, and therefore, I find that the landlord has not met the burden of proving any of the fees as against the tenant.

With respect to the landlord's request for an Order of Possession, the landlord's agent testified that all rental payments from May through September, 2012 have been paid. The landlord did not tell the tenant orally or in written form that the payments made to the landlord after the notice to end tenancy was issued were being accepted for use and occupancy only, and therefore, I find that the landlord has effectively reinstated the tenancy. The landlord's application for an Order of Possession must be dismissed.

Since the landlord has been partially successful with the application, the landlord is entitled to recovery of the \$50.00 filing fee for the cost of this application.

Conclusion

For the reasons set out above, the application as against the first named tenant is hereby dismissed without leave to reapply, as withdrawn by the landlord.

The landlord's application for an Order of Possession based on the notice to end tenancy dated July 14, 2012 is hereby dismissed without leave to reapply.

I hereby grant a monetary order in favor of the landlord pursuant to section 67 of the *Residential Tenancy Act* in the amount of \$448.00.

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: September 17, 2012.

Residential Tenancy Branch