



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, FF

Introduction

This hearing dealt with the landlord's application for a Monetary Order for unpaid rent, utilities, and city fines. The tenant did not appear at the hearing. The landlords testified that they sent the hearing package to the tenant via registered mail. The address used was the tenant's parent's address. The landlords testified that the tenant advised the landlords that he was moving back to his parents' house and he orally provided them with the address. The landlords provided a registered mail receipt, including tracking number, as proof of service. Based upon the landlord's undisputed submissions I accepted that the landlords served the tenant in a manner that complies with the Act and I proceeded to hear from the landlords without the tenant present.

Issue(s) to be Decided

Have the landlords established an entitlement to recover unpaid rent, utilities, and city fines from the tenant?

Background and Evidence

The tenancy commenced October 15, 2010 and the tenant paid a \$1,000.00 security deposit. The tenant was required to pay rent of \$2,000.00 on the 1st day of every month including heat and hydro under a written tenancy agreement. The landlords testified that the tenancy ended May 31, 2012.

The tenant failed to pay rent for December 2011 and January 2012 when due. The landlords issued a letter to the tenant on January 8, 2012 requesting the outstanding rent of \$4,000.00. The landlords proceeded to remove their names from the utility bills and reduced the rent to \$1,800.00 per month effective February 1, 2012. The tenant made two payments to the landlords in 2012 of: \$1,900.00 and \$800.00.

The landlords are seeking unpaid rent for the months of February 2012 through May 2012 in the amount of \$7,200.00 [\$1,800.00 x 4 months]. In addition, the landlords are seeking \$554.92 in outstanding rent for the month of January 2012.

I asked the landlord to explain the calculation of \$554.92 for the month of January 2012. The landlord explained that the \$2,700.00 paid by the tenant in 2012 was applied to the outstanding rent for December 2012 and outstanding utilities before applying the remainder to rent owed for January 2012. When I pointed out that the amount claimed for January 2012 was not consistent with the landlord's explanation the landlord stated that there may have been another payment made in December 2011 but that he could not recall the amount.

When I pointed out that utilities were included in the monthly rent prior to February 2012 the landlord testified that under an oral agreement the tenant was required to pay for utilities that exceeded \$200.00 per month.

The landlords are also seeking to recover fines in the amount of \$950.00 from the tenant. On February 22, 2012 the city issued fines totalling \$900.00 for burning construction demolition waste, burning without a permit, and failure to maintain a fire watch at the property. The fines were issued in the names of the landlords as the registered owners of the property.

Analysis

A tenant is required to pay rent when due in accordance with the terms of their tenancy agreement. The written tenancy agreement provided to me requires that the tenant pay \$2,000.00 per month inclusive of utilities. As I informed the landlords during the hearing a written tenancy agreement takes precedent over an oral agreement. As the written tenancy agreement does not contain a provision for the tenant to pay utilities that exceed \$200.00 per month I shall not enforce any such oral agreement.

I found the landlord's submissions and evidence insufficient to reconcile the amount of rent claimed for January 2012 and I make no award for that month.

Although the landlords did not terminate the utility accounts and reduce the rent in accordance with the requirements of section 27 of the Act I grant the landlords' request for rent in the amount of \$1,800.00 per month starting February 2012 as this is less than the rent payable under the tenancy agreement. Therefore, I award the landlords unpaid rent in the amount of \$7,200.00 for February 2012 through May 2012.

I also award the landlords recovery of the city fines for unauthorized burning on the property as I find the landlords substantiated this claim. Therefore, I award the landlords \$950.00.

I also award the \$100.00 filing fee to the landlords and authorize the landlords retain the security deposit in partial satisfaction of the amounts owed to the landlord.

In light of the above, the landlords are provided a Monetary Order calculated as follows:

Unpaid rent: February – May 2012	\$ 7,200.00
City fines	950.00
Filing fee	100.00
Less: security deposit	<u>(1,000.00)</u>
Monetary Order	\$ 5,000.00

The landlords must serve the Monetary Order upon the tenant and may enforce it in Provincial Court (Small Claims) as necessary.

Conclusion

The landlords have been authorized to retain the tenant's security deposit and have been provided a Monetary Order for the balance of \$5,000.00 to serve upon the tenant.

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: November 27, 2012.

Residential Tenancy Branch