



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNR, OPR, CNR

Introduction

This hearing was convened in response to applications by the tenants and the landlord.

The tenants' application is seeking orders as follows:

1. To cancel a ten day notice for unpaid utilities issued on October 3, 2012; and
2. To recover the cost of filing the application.

The landlord's application is seeking orders as follows:

1. For an order of possession for unpaid utilities;
2. For a monetary order for unpaid utilities; and
3. To recover the cost of filing the application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Issue(s) to be Decided

Should the ten day notice for unpaid utilities issued on October 3, 2012, be cancelled?

Is the landlord entitled to an order of possession for unpaid utilities?

Is the landlord entitled to a monetary order for unpaid utilities?

Background and Evidence

The tenancy began on October 6, 2009. Rent in the amount of \$975.00 was payable on the first of each month. A security deposit of \$487.50 was paid by the tenants.

The parties agree the tenant was served with a ten day notice to end tenancy for unpaid utilities issued on October 3, 2012. The parties agree the unpaid utility is a security deposit requested by the hydro company for late payments and is not for unpaid consumed utilities.

The parties also agree that the tenants have provided written notice to end tenancy. Filed in copy of that notice, the notice also alleged the landlord has extinguished any right to claim against the security deposit as there was no move-in inspection report completed.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In this case, the landlord served the tenant with a ten day notice to end tenancy for failing to pay a hydro security deposit. This security deposit was requested by the hydro company as a result of the landlords account not being paid by the required due date.

Landlord prohibitions respecting deposits

20 A landlord must not do any of the following:

- (a) require a security deposit at any time other than when the landlord and tenant enter into the tenancy agreement;
- (b) require or accept more than one security deposit in respect of a tenancy agreement;**
- (c) require a pet damage deposit at any time other than
 - (i) when the landlord and tenant enter into the tenancy agreement, or
 - (ii) if the tenant acquires a pet during the term of a tenancy agreement, when the landlord agrees that the tenant may keep the pet on the residential property;
- (d) require or accept more than one pet damage deposit in respect of a tenancy agreement, irrespective of the number of pets the landlord agrees the tenant may keep on the residential property;
- (e) require, or include as a term of a tenancy agreement, that the landlord automatically keeps all or part of the security deposit or the pet damage deposit at the end of the tenancy agreement

[Emphasis added.]

Under Section 20 of the Act, it prohibits a landlord from collection more than one security deposit relating to a tenancy agreement. As a result, I find that the notice to end tenancy issued on October 3, 2012, is not a valid notice and must be cancelled. The tenancy will continue until ended in accordance with the Act.

As the landlord has not been successful, I find the landlord is not entitled to recover the filing fee from the tenants.

As the tenants have been successful with their application, I find the tenants are entitled to recover the fee paid for this application from the landlord. Therefore, I grant the tenants a monetary order in the amount of **\$50.00**. Should the landlord fail to comply with this order.

Note: As the tenancy is legally ending in accordance with the Act, due to written notice provided by the tenants. If at the end of the tenancy the tenants have not paid the outstanding utilities as required by the tenancy agreement and the tenants have received written notice to pay those utilities. Under the Act, the landlord can apply to retain the security deposit for unpaid rent and utilities within 15 days of tenancy ending or within 15 days of receiving the tenants' forwarding address, whichever is later. As the extinguishment provision for damages (as alleged by the tenant) does not apply to unpaid rent or utilities.

Conclusion

I order that the notice to end tenancy is cancelled and tenancy will continue until ended in accordance with the Act.

The tenants are granted a monetary order for cost of the filing their application.

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 06, 2012.

Residential Tenancy Branch