



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant – CNR, LRE, RP, FF

For the landlord – OPC, MNR, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied to cancel a 10 Day Notice to End Tenancy for unpaid rent, For an Order to suspend or set conditions on the landlords right to enter the rental unit; for an Order for the landlord to make repairs to the unit, site or property; and to recover the filing fee from the landlords for the cost of this application. The landlord has applied for an Order of Possession for cause; for a Monetary Order for unpaid utilities; and to recover the filing fee from the tenant for the cost of this application.

The landlord testifies that he did not receive the tenant's application or notice of hearing letter and is unaware of the tenant's application. The tenant testifies that she posted a copy of her application and Notice of hearing on the landlord's door. As this is not a method of service recognized under the *Residential Tenancy Act (Act)* for service of hearing documents and the tenant has provided no evidence to show the landlord received the tenants hearing documents I find the tenant has not served the landlord in accordance with s. 89 of the *Act* and the tenants application is dismissed without leave to reapply.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The

landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession based on the reasons given on the One Month Notice to End Tenancy?
- Is the landlord entitled to a Monetary Order to recover unpaid utilities?

Background and Evidence

Both parties agree that this month to month tenancy started on September 27, 2012. The tenancy agreement provided in evidence shows that rent for this unit is \$1,275.00 plus utilities per month and is due on the first of each month.

The landlord testifies that the tenant paid the security deposit of \$600.00 by cheque on October 01, 2012. However this cheque was returned due to insufficient funds. The tenant has still not paid the security deposit. The landlord testifies that the tenants rent cheque for October was also returned due to insufficient funds and the landlord had served the tenant with a 10 Day Notice for unpaid rent concerning this however the tenant has since paid the outstanding rent on October 16, 2012.

The landlord testifies that he served the tenant with a One Month Notice to End Tenancy on November 01, 2012. This Notice informed the tenant that the security deposit was not paid within 30 days as required by the tenancy agreement. The tenant has not applied to dispute this Notice.

The landlord testifies that the tenant has failed to pay the utilities. The landlord testifies that the tenant was given lower rent for the unit and had to pay all the utilities for the

house. The landlord testifies that this was made clear to the tenant at the start of the tenancy. The landlord has provided utilities bills as follows:

Fortis Electric - \$176.61 from September 14 to November 15, 2012

Fortis Gas - \$111.00 from September 14 to September 17, 2012

Fortis gas - \$166.00 from September 17 to October 18, 2012

Fortis gas – \$150.13 from October 18 to November 19, 2012.

The landlord testifies that the last two gas bills are on a monthly installment plan and the landlord has actual paid \$83.00 for these bills each month. The landlord testifies that the bills are in his name and the tenants in the lower unit have the utilities included in their rent. The landlord testifies if the tenant did not have the utilities in her name then her rent would have been \$100.00 more each month.

The landlord testifies that the tenant has also kept two dogs in the rental unit despite the tenancy agreement stating no pets allowed. The landlord seeks an Order of Possession and a Monetary Order to recover the unpaid utilities.

The tenant disputes the landlords claim. The tenant testifies that the landlord wanted a full month's rent for the security deposit but was only entitled to half the month's rent. The tenant agrees her cheque for the security deposit was uncleared at the bank and agrees that the security deposit has not been paid.

The tenant disputes the landlord's claims for utilities. The tenant testifies that when she signed the tenancy agreement it states rent is \$1,275.00 plus utilities per month. The tenant testifies that she should not be made to pay the lower tenants utility bills and disputes that she agreed to do so or that the landlord had explained this to her prior to signing the tenancy agreement. The tenant testifies that she has no objection to paying for the utilities she has used for her own rental unit.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties, With regard to the landlord's application for an Order of Possession for cause. The tenant agrees that the security deposit has not been paid. I accept that the landlord did seek to change the tenant \$1,200.00 for a security deposit and the maximum allowed under the *Act* would have been \$637.50, however as the tenant failed to pay this sum then the landlord would be entitled to an Order of Possession based on that ground of the One Month Notice.

I further find that the tenant has not disputed the One Month Notice within the 10 allowable days as indicated on page two of the Notice therefore the tenant is presumed to have accepted the end of the tenancy. As the landlord did not serve the tenant with the Notice until November 01, 2012 and rent is due on that day the effective date of the Notice has been amended to December 31, 2012 pursuant to s. 53 of the *Act*. A landlord must give a tenant one clear months notice and the Notice should have been served by October 30, 2012 in order to have been effective on November 30, 2012.

The landlord is therefore issued with an Order of Possession effective on December 31, 2012 pursuant to s. 55 of the *Act*.

With regard to the landlords claim for unpaid utilities; I refer the parties to the Residential Tenancy Policy Guidelines # 1 which state, in part,

A term in a tenancy agreement which requires a tenant to put the electricity, gas or other utility billing in his or her name for premises that the tenant does not occupy, is likely to be found unconscionable as defined in the Regulations.

As these utilities are in the landlords name but the landlord requires this tenant to pay the utilities for the entire house including the utilities used by the tenants living in the lower unit I find this is unconscionable. I also find the landlord has not made it clear on

the tenancy agreement that the tenant is responsible for all the utilities or that the rent has been reduced to take into account the utilities. Therefore as no other evidence has been provided to the contrary I find the tenant is only liable for the utilities used in the tenants rental unit and as such the tenant need only pay 50 percent of the utilities.

I further find some of the utility bills provided in evidence by the landlord are for a period when the tenant was not residing in the rental unit. Consequently, I have calculated the bills on a daily rate, deducted the daily rate from the days the tenant was not residing in the unit and based the balance on a 50 percent split of the bills as follows.

Electric - September 27- November 15, 2012 = \$49.67

Gas – September 14 to September 17 = \$0.00

Gas – September 27 to October 18, 2012 = \$38.91

Gas – October 18 to November 19, 2012 = \$75.06

The landlord is therefore entitled to recover the sum of **\$163.64**. Any further utilities bills received by the landlord up to December 31, 2012 must be dealt with in accordance to this decision and calculated on a 50 percent split for this tenant.

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

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 **\$213.64**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective on **December 31, 2012**. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

The tenant's application is 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: December 13, 2012.

Residential Tenancy Branch