



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF (MNDC)

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; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement (amended); and to recover the filing fee from the tenant for the cost of this application.

Service of the hearing documents, by the landlords to the tenant, was done in accordance with section 89 of the *Act*, and was served in person to the tenant on December 27, 2012.

The landlords appeared, gave sworn testimony, were provided the opportunity to present evidence orally, in writing, and in documentary form. The landlords were permitted to provide additional evidence after the hearing had concluded. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession due to unpaid rent and utilities?
- Is the landlord entitled to a monetary Order to recover unpaid rent and utilities?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord entitled to keep the security deposit?

Background and Evidence

This month to month tenancy started on August 01, 2012. Rent for this unit is \$900.00 per month plus one third of utilities. Rent is due on the first of each month. The tenant paid a security deposit of \$450.00 on August 01, 2012.

The landlords' testify that the tenant failed to pay rent for September, October, November and December, 2012 to the amount of \$3,600.00. The landlords issued a 10 Day Notice to End Tenancy for unpaid rent on November 03, 2012. This was served upon the tenant in person on this date. This Notice states that the tenant owes rent of \$3,000.00 and utilities of \$63.86. The tenant had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on November 11, 2012. The tenant did not pay the outstanding rent or dispute the Notice within five days. Since that time the tenant has also failed to pay rent for January, 2013. The total amount of outstanding rent is now \$4,500.00. The landlords testify that although the tenant has moved some of his belongs out the tenant remains in possession of the rental unit as the tenant has changed the locks on or about January 04, 2013 and some of the tenants belongings still remain in the rental unit.

The landlords testify that the tenancy agreement signed by the parties notified the tenant that he must pay one third of the utilities. The landlords' testify that the tenant has failed to pay some utilities and the tenant has been provided with copies of the utility bills and asked to pay. The tenant now owes: Hydro of \$331.76 and Gas of \$37.11. Copies of the utility bills have been provided in evidence.

The landlords have applied to retain the tenants' security deposit in partial payment towards the rent arrears. The landlords have also applied for an Order of Possession to take effect within two days of service.

At the hearing the landlords asked to amend their claim to cover the cost of a locksmith. The landlords testify that they discovered the tenant had changed the locks to the rental unit around January 04 or January 05, 2013 when their heating failed and they needed to gain access to the rental unit to have the heat put back on. At this time they discovered that the

tenant had changed the locks and the landlords had to get a locksmith out to gain entry to the rental unit. The landlords seek to recover the cost for the locksmith and have provided an invoice in evidence to the sum of \$180.21.

The landlords testify that they had told the tenant that they would be willing to prorate the rent claimed for January until the date the tenant actually moves out as the landlords have another tenant waiting to take possession.

Analysis

Section 26 of the Act states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Consequently I am satisfied with the undisputed evidence before me that the tenant has failed to pay rent for September, October, November and December, 2012 and for January 2013. As the tenant remains in possession of the rental unit I find the landlords are entitled to recover rent for January, 2013. As the landlords have stated they have an agreement with the tenant to prorate January's rent up to the day the tenant fully vacates the rental unit, the landlords will adjust the amount they seek from the tenant accordingly. Consequently I find the landlords have established a claim for unpaid rent and are entitled to a monetary award to the sum of **\$4,500.00** pursuant to s.67 of the Act.

I further find the landlords have established a claim for unpaid utilities to the sums of **\$331.76** for Hydro and **\$37.11** for Gas.

I order the landlords pursuant to s. 38(4)(b) of the Act to keep the tenant's security deposit of **\$450.00** in partial payment of the rent arrears.

I have considered the landlords request to amend their claim to recover costs incurred in having a locksmith come out to change the lock. I refer the tenant to s. 31(3) of the *Act* which states:

(3) A tenant must not change a lock or other means that gives access to his or her rental unit unless the landlord agrees in writing to, or the director has ordered the change.

I am satisfied therefore that the landlords had to gain access to the rental unit to protect their property when the heating failed and find as the tenant had changed the locks that the landlords are entitled to recover the costs incurred by a locksmith of **\$180.21**.

As the landlords have been successful in this matter, the landlords are also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

The landlords will receive a Monetary Order pursuant to s. 67 and 72(1) of the *Act* for the balance owing as follows:

| | |
|--|-------------------|
| Outstanding rent | \$4,500.00 |
| Outstanding Hydro | \$331.76 |
| Outstanding Gas | \$37.11 |
| Locksmith fees | \$180.21 |
| Subtotal | \$5,049.00 |
| Less Security Deposit | (-\$450.00) |
| Plus filing fee | \$50.00 |
| Total amount due to the landlords | \$4,649.08 |

I have reviewed all documentary evidence and accept that the tenant has been served with Notice to End Tenancy pursuant to section 88 of the *Residential Tenancy Act*. The notice is deemed to have been received by the tenant on November 03, 2012 and the effective date of the notice is amended to November 13, 2012 pursuant to section 53 of the *Act*. The Notice states that the tenant has five days to pay the rent and utilities, or apply for Dispute

Resolution or the tenancy would end. The tenant did not pay the outstanding rent or utilities within five days nor apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, I find that the tenant is conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice and grant the landlord an order of possession pursuant to section 55 of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$4,649.08**. 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 landlords effective **two days** after service on the tenant. This order must be served on the Respondent and may be filed in the Supreme Court and enforced 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: January 16, 2013

Residential Tenancy Branch

