



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MND MNR FF

Introduction

This hearing was convened as a result of the landlords' application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "Act"). The landlords applied for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, for damage to the unit, site or property, and to recover the filing fee.

The landlords appeared at the teleconference hearing and gave affirmed testimony. The landlords were advised of the hearing process and were given the opportunity to ask questions about the hearing process during the hearing.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice") was considered. The landlords testified under oath that the Notice and evidence was served on the tenants by registered mail on January 23, 2013. The landlords provided a registered mail receipt with tracking numbers as evidence and confirmed that the names and addresses matched the name of the tenant and the address of the rental unit and that the tenants were still living at the rental unit at the time they were served as the tenants did not vacate the rental unit until February 1, 2013. The landlords stated that the male tenant, RL, picked up his registered mail package on January 24, 2013 which they confirmed through the online registered mail tracking website. The landlords stated that the female tenant, LH, refused to pick up her registered mail package. Section 90 of the *Act*, states that documents served by registered mail are deemed served five days after they are mailed. I find the tenants are deemed duly served on the fifth day after the registered mail packages were mailed on January 23, 2013, in accordance with the *Act*.

A summary of the testimony is provided below and includes only that which is relevant to the hearing.

Preliminary and Procedural Matters

The landlords requested to amend their application from \$5,000.00 down to \$4,897.00 as the actual utility bills, which had not been received at the time of submitting their application, ended up being slightly less than they were expecting. As the landlords' request to amend the application to a lower amount does not prejudice the tenants, the landlords request was granted.

The landlords withdrew their application for an order of possession as the tenants vacated the rental unit on February 1, 2013. As a result, the landlords have possession of the rental unit back including the keys to the rental unit, and no longer seek an order of possession.

The landlords withdrew the portion of their application related to damages. As a result, the hearing continued with consideration of the landlords' request for a monetary order for unpaid rent and utilities, and the recovery of the filing fee. The landlords are at liberty to re-apply for damages, however, withdrawing this portion of their application does not extend any time limits under the *Act*.

Issue to be Decided

- Are the landlords entitled to a monetary order under the *Act*, and if so, in what amount?

Background and Evidence

A month to month tenancy agreement began on June 15, 2012. Monthly rent in the amount of \$1,600.00 was due in two payments of \$800.00 every two weeks by mutual agreement of the parties. The landlords stated that tenants failed to pay a security deposit as the cheque was returned as "dishonoured", which was submitted in evidence. The tenancy agreement indicates electricity and heat were not included as part of the monthly rent.

The landlords stated that the tenants vacated the rental unit on February 1, 2013 and returned the keys on the same date. The landlords have claimed for \$4,897.00 comprised of the following:

Item #	Description	Amount
1	Unpaid portion of November 2012 rent (November 16-30, 2012)	\$800.00
2	Unpaid December 2012 rent	\$1,600.00
3	Unpaid January 2013 rent	\$1,600.00
4	Unpaid electrical utilities from July 21 – September 19, 2012	\$148.00
5	Unpaid electrical utilities from September 20 – November 21, 2012	\$172.00
6	Unpaid electrical utilities from November 22, 2012 – January 20, 2013	\$241.00
7	Unpaid gas utilities from August 20 – September 19, 2012	\$35.00
8	Unpaid gas utilities from September 20 – October 19, 2012	\$27.00
9	Unpaid gas utilities from October 20 – November 21, 2012	\$121.00
10	Unpaid gas utilities from November 22 – December 19 2012	\$79.00
11	Unpaid gas utilities from December 20, 2012 – January 19, 2013	\$74.00
TOTAL		\$4,897.00

Items #1, #2 and #3 are for a total of \$4,000.00 for unpaid rent comprised of \$800.00 for November 16 – November 30, 2012, \$1,600.00 for unpaid December 2012 rent, and \$1,600.00 for unpaid January 2013 rent. The tenancy agreement submitted in evidence indicates that rent in the amount of \$1,600.00 is due each month.

Items #4 through #11 are for unpaid utilities in the amount of \$897.00 as indicated above. The landlords submitted invoices for the utilities owed and stated that the tenants owed 2/3 of each invoice. The landlords stated that the tenants did pay 2/3 of one or two bills, but have not made any payments towards items #4 through #11 indicated above.

The landlords submitted a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) dated January 2, 2013, which indicates that the 10 Day Notice was served in the mailbox of the tenants on January 2, 2013, with an amount owing of \$2,400.00 due December 31, 2012, and with an effective vacancy date of

January 16, 2013. The tenants did not dispute that 10 Day Notice or pay rent within 5 days of receiving that 10 Day Notice.

The landlords submitted a copy of the 10 Day Notice, payment history, payment history ledger, proof of insufficient funds cheque for security deposit, unpaid utility bills, tenancy agreement, addendum to tenancy agreement, and bills received after application was first submitted, in evidence.

Analysis

Based on the documentary evidence and the undisputed oral testimony of the landlords, and on the balance of probabilities, I find the following.

Items #1, #2 and #3 - Unpaid rent – The landlords testified that the tenants failed to pay all of the rent for November 2012, specifically \$800.00 remains owing for November 16, 2012 to November 30, 2012. In addition, the landlords stated that the tenants failed to pay rent \$1,600.00 for December 2012 and \$1,600.00 for January 2013. Section 26 of the *Act* states that tenants must pay rent when it is due in accordance with the tenancy agreement. I accept that the landlords permitted the tenants to pay their monthly rent of \$1,600.00 in two monthly payments of \$800.00 which resulted in two payments of \$800.00 each month for a total of \$1,600.00.

Based on the above, I find that the tenants have failed to comply with a standard term of the tenancy agreement which stipulates that \$1,600.00 rent is due monthly. I find the landlords have met the burden of proof and **I find** the landlords have established a monetary claim of **\$4,000.00** comprised of unpaid rent.

Items #4 through #11 – Unpaid utility bills – These items total \$897.00 for unpaid gas and electrical utilities and are described in detail earlier in this decision in the table provided. The landlords submitted copies of unpaid invoices and indicated that each amount owing as claimed represented the tenants' portion of 2/3 of each unpaid utility bill. The tenancy agreement clearly indicates that electricity and heat were not included in the monthly rent. I accept the landlords' undisputed testimony that the tenants' portion was 2/3 of the gas and electrical utilities and that the pattern of one or two earlier payments by the tenants of 2/3 supports the landlords' testimony that the agreed upon arrangement was that the tenants who lived in the upstairs rental unit would pay 2/3 of the utilities, while the lower unit tenants were responsible for the other 1/3 of the utilities.

I find the amount being claimed for this portion of the landlords' claim is reasonable and supported by the evidence submitted and testimony and that the landlords have met the

burden of proof. Therefore, **I grant** the landlords **\$897.00** for their portion of the unpaid utilities.

As the landlords' application had merit, **I grant** the landlords the recovery of the filing fee in the amount of **\$50.00**.

Monetary Order – I find that the landlords have established a total monetary claim in the amount of **\$4,947.00** comprised of \$4,000.00 in unpaid rent, \$897.00 in unpaid utilities, and the \$50.00 filing fee. **I grant** the landlords a monetary order pursuant to section 67 of the *Act* in the amount of \$4,947.00. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

I find that the landlords have established a total monetary claim of \$4,947.00. I grant the landlords a monetary order pursuant to section 67 of the *Act* in the amount of \$4,947.00. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: February 27, 2013

Residential Tenancy Branch

