



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD FF
 CNR FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the Landlord and the Tenant.

The Landlord filed on February 13, 2013 to obtain an Order of Possession for unpaid rent and utilities and a Monetary Order for: unpaid rent and utilities; to keep the security deposit; and to recover the cost of the filing fee from the Tenant for this application.

The Tenant filed seeking an Order to cancel a Notice to end tenancy issued for unpaid rent and to recover the cost of the filing fee for her application.

The parties appeared at the teleconference hearing and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Has the Landlord regained possession of the rental unit? If so, has he withdrawn his request for an Order of Possession?
2. Should the Landlord be issued a Monetary Order?
3. Is the Tenant's application moot?

Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of: Canada Post receipts; the tenancy agreement; a 10 Day Notice to end tenancy for unpaid rent; a 1 Month Notice to end tenancy for cause; the Landlord's

written statement; a statement of utility payments outstanding; photos of the rental unit; photos of the Landlord's injured hand; e-mails between the parties; and letters issued to the Tenant from the Landlord during the course of this tenancy.

The Tenant submitted documentary evidence which included, among other things, copies of: Canada Post receipts; her written statement; the 10 Day Notice to end tenancy for unpaid rent; the tenancy agreement; a statement for outstanding utility payments; e-mails and letters written between the parties.

The Tenant argued that she did not receive the Landlord's evidence and advised that she has not had her mail forwarded to her new address. She stated she has currently having her mail held. The Landlord advised that he sent the evidence via registered mail on February 26, 2013 and provided the tracking information in his oral testimony. He confirmed that he did not submit copies of utility bills in his evidence.

The parties agreed they entered into a written month to month tenancy agreement that began on August 15, 2012. Rent was payable on the first of each month in the amount of \$950.00 plus 30% of the utilities bills. At the outset of the tenancy the Tenant paid \$475.00 as the security deposit. No move-in or move-out condition inspection report forms were completed.

The Landlord stated that when the Tenant breached the tenancy by having a rabbit, a deep freezer, and with allowing an additional person to move in without his prior approval, he issued her a 1 Month Notice to end tenancy on January 17, 2013. Then when the Tenant failed to pay the full amount due for February 1, 2013 rent he issued her a 10 Day Notice for unpaid rent and unpaid utilities on February 5, 2013. At that time the Tenant had accumulated \$238.01 in unpaid utilities plus \$475.00 in unpaid rent.

The Landlord advised that the Tenant vacated the property on February 28, 2013 leaving the unit unclean and with some damage.

The Tenant confirmed she vacated the property on February 28, 2013 without providing the Landlord with a forwarding address. She stated she paid half of February's rent of \$475.00 and told the Landlord to use her security deposit as the rest of the rent. She confirmed she has not paid the \$238.01 in outstanding utilities because the Landlord refused to give her copies of the bills. She stated that throughout her tenancy the Landlord would give her a sticky note with the amount owing for utilities and would never give her a copy of the bills. The bills kept increasing so she began to ask for copies of the bills but he refused.

The Landlord confirmed that he did not give the Tenant copies of the bills prior to December 2012. He stated that he gave the Tenant copies when she asked but did not provide any utility bills into his evidence as support for this claim.

The Landlord advised that he was withdrawing his request for an Order of Possession because he has regained possession. He is seeking \$475.00 for unpaid February rent, \$238.01 for utilities up to the end of January 2013, plus \$226.99 as estimated utilities for February 2013, plus his filing fee.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Landlord's application

The Tenant did not receive copies of the Landlord's evidence and moved out of the rental unit two days after it was sent to her by registered mail. She confirmed that she has not had her mail forwarded and instead is having her mail held. As both parties appeared at this hearing and provided oral evidence the Landlord's documentary evidence was not considered in determining his claim.

The undisputed evidence was that the Tenant only paid half of February 2013 rent which is a breach of section 26 of the Act which stipulates a tenant must pay rent in accordance with the tenancy agreement. Accordingly, I find the Landlord has met the burden of proof for unpaid rent and I award him rent for February 2013 in the amount of **\$475.00**.

The Landlord seeks payment for 30% of the outstanding utility bills of \$238.01 up to January 2013 plus \$226.99 for February 2013. The Tenant has disputed the amounts being claim as she has never seen any of the utility bills.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. In this case, the Landlord has the burden to prove the exact amount owing for utilities. Accordingly, in the absence of the actual utility bills the only evidence before me was disputed verbal testimony which I find to be insufficient to meet the Landlord's burden of proof. Accordingly, I dismiss the Landlord's claim for utilities, without leave to reapply.

Note, the Landlord's documentary evidence, if used, would not have been sufficient to prove the actual costs of utilities as he only submitted a statement that he created himself rather than the actual utility bills.

The Landlord has been partially successful with his application; therefore I award partial recovery of the filing fee in the amount of **\$25.00**.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

February 2013 rent	\$ 475.00
Filing Fee	<u>25.00</u>
SUBTOTAL	\$ 500.00
LESS: Security Deposit \$475.00 + Interest 0.00	<u>- 475.00</u>
Offset amount due to the Landlord	<u>\$ 25.00</u>

Tenant's application

The Tenant filed an application to dispute the 10 Day Notice to end tenancy for unpaid rent and then vacated the rental unit on February 28, 2013. Accordingly, her application for dispute resolution is now moot.

As the Tenant vacated the rental unit in accordance with the 10 Day Notice and/or the 1 Month Notice I decline to award her recovery of the filing fee.

Conclusion

The Landlord has been awarded a Monetary Order in the amount of **\$25.00**. This Order is legally binding and must be served upon the Tenant.

No further action is required regarding the Tenant's application and it is now closed.

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: March 04, 2013

Residential Tenancy Branch

