



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MND, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to the landlords application for an Order of Possession for unpaid rent and utilities; for a Monetary Order for unpaid rent or utilities; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants security deposit; and to recover the filing fee from the tenants for the cost of this application. During the hearing the landlord withdrew his application for a Monetary Order for Damage to the unit, site or property.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*; and was served to the tenant's roommate in person on April 24, 2013. The tenant was deemed to be served the hearing documents on that day.

The landlord and the tenant's roommate appeared at the hearing and gave sworn testimony. The tenant's roommate later left the hearing after it was determined that he was not a tenant of the rental unit. The landlord was provided the opportunity to present evidence orally, in writing, and in documentary form. 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 for unpaid rent and utilities?
- Is the landlord entitled to a Monetary Order for unpaid rent and utilities?
- Is the landlord permitted to keep the security deposit?

Background and Evidence

The landlord testifies that this tenancy started with the tenant NM on January 01, 2013. Later the tenant got a roommate who paid his rent directly to the tenant and was not included on the tenancy agreement. Rent for this unit was \$875.00 per month due on the 1st day of each month in advance. This was a three month fixed term tenancy reverting to a month to month tenancy. The tenant failed to pay a security deposit as requested as the tenants cheque was returned due to insufficient funds (NSF).

The landlord testifies that the tenant paid two cheques in January one for \$640.00 and another one for \$640.00 which included the balance of rent and a sum for a security deposit. The landlord testifies that one of these cheques cleared however the second cheque did not clear and was NSF. The tenant owes rent for January, 2013 of \$235.00 plus the security deposit. The tenants rent cheque for February was also NSF for \$875.00. The tenants rent cheque for March did clear at the bank however the landlord issued the tenant a 10 Day Notice to End Tenancy for unpaid rent due to the outstanding rent for January and February of \$1,110.00.

The landlord testifies that the tenant did not make any further rent payments despite the tenant's roommate having made payments to the tenant for his share of the rent. The tenant failed to pay rent for April, 2013 and a second 10 Day Notice was served upon the tenant on April 19, 2013. This Notice has an effective date of April 30, 2013. The landlord testifies that the tenant has made no further rent payments to the landlord and the outstanding rent is now \$1,985.00.

The landlord testifies that the tenant failed to pay a quarterly utility bill. The upstairs tenants paid their share of the bill leaving an amount owed by the tenant of \$95.04. The landlord seeks to recover this sum from the tenant and has provided a copy of the bill in evidence. The landlord testifies that there are other bills that will be owed by the tenant but the landlord has not yet received copies of these bills from the utility companies.

The landlord testifies that the tenant vacated the rental unit on April 27, 2013 but as the tenant's roommate remains in possession of the unit the landlord seeks an Order of Possession to gain vacant possession of the rental unit. The landlord also seeks an Order to recover the unpaid security deposit and the filing fee.

Analysis

Section 26 of the *Residential Tenancy Act (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, as the tenant has failed to attend the hearing to dispute the landlords claim I find from the documentary evidence and testimony of the landlord that the tenant has failed to pay rent for January, February and April, 2013 and the landlord is entitled to recover these rent arrears. Consequently, the landlord will receive a Monetary Order to the sum of **\$1,985.00**.

With regard to the landlords claim for utilities the landlord has sufficient evidence to show that the tenant owes utilities of **\$95.04** for January to March, 2013 for the quarterly irrigation bill. The landlord is therefore entitled to recover this amount from the tenant and will receive a Monetary Order for this amount. The landlord is at liberty to file a new application to recover any further outstanding utilities that the tenant owes when the landlord receives the utility bills and has provided copies of the bills to the tenant with a written demand for payment within 30 days.

With regards to the landlords claim to recover the security deposit; as the tenant failed to pay a security deposit at the start of the tenancy a landlord is not entitled to recover this unpaid amount at the end of a tenancy as a security deposit, when paid, is an amount held in trust by the landlord until the tenancy ends. Consequently, as no amount was paid this section of the landlords claim is dismissed.

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

It is my decision that although the tenant has vacated the rental unit the tenant's roommate remains in the unit and therefore the tenant still has possession of the unit as the tenant's roommate is the responsibility of the tenant. Therefore I find the landlord is still entitled to an Order of Possession to gain vacant possession of the rental unit and 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. I therefore grant the landlord an order of possession pursuant to s. 55 of the *Act*.

The landlord is entitled to recover the **\$50.00** filing fee from the tenant pursuant to s. 72(1) of the *Act*.

The landlord has entered the tenants name and the tenants roommates name on the application for Dispute Resolution. AS it has been determined that the tenants roommate is not a tenant then the tenant, then any Orders issued to the landlord will be in the tenants name only.

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 **\$2,130.04** comprised

of unpaid rent, utilities and the filing fee. 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 **two days after service upon 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: May 23, 2013

Residential Tenancy Branch

