



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant – CNR

For the landlord – OPR, MNR, MNSD, MNDC, 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 Notice to End Tenancy for unpaid rent. The landlord applied for an Order of Possession for unpaid rent or 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; and to recover the filing fee from the tenants for the cost of this application. The landlord withdrew his application for a Monetary Order for money owed or compensation for damage or loss during the hearing.

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 and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Are the tenants entitled to have the 10 Day Notice to End Tenancy cancelled?
- Is the landlord entitled to an Order of Possession for unpaid rent?
- Is the landlord entitled to a Monetary Order for unpaid rent or utilities?
- Is the landlord permitted to keep the security deposit?

- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agree that this tenancy started on March 01, 2009 for a fixed term of one year. The agreement then reverted to a month to month tenancy after the first year. Rent for this unit was \$2,000.00 per month and is due on the first day of each month. The tenants paid a security deposit of \$1,000.00 in the last week of February, 2009.

The landlord testifies that the tenants owe rent of \$600.00 for April, and \$2000.00 for May, 2013. The tenants were served with a 10 Day Notice to End Tenancy on May 07, 2013. This Notice informed the tenants that they owed rent of \$2,600.00 and informed the tenants that they had either five days to pay the rent or dispute the Notice or the tenancy would end on May 17, 2013. Since that time the landlord testifies the tenants have also failed to pay rent for June, 2013. The landlord agrees that the tenants are vacating the unit and have removed their belongings however some items remain in the garage and the keys have not yet been returned. The landlord therefore limits his claim for unpaid rent for June to \$1,000.00.

The landlord testifies that the tenants owe an approximate amount of \$2,500.00 for unpaid water bills. The landlord has not provided any evidence as to which water bills are outstanding.

The landlord seeks an Order of Possession for unpaid rent; the landlord seeks an Order to keep the security deposit and to recover the filing fee.

The tenants dispute the landlords claim. The tenant DR testifies that they do not dispute that they did not pay \$600.00 for April and \$2,000.00 for May, 2013; however the tenant testifies that this was withheld due to a loss of living space when there was a flood in

the tenant's basement and the tenants were unable to use that area and for excessive water bills. The tenant testifies that they did attempt to later pay the rent in May however the landlord and the landlords agent were both at a wedding out of town that weekend and the tenant was unable to pay the rent. The tenant agrees that they have not paid rent for June, 2013 but testify that they have moved virtually all their belongings from the house and left the house clean.

The tenant disputes the landlords claim for unpaid utilities. The tenants have provided copies of some water bills in their evidence. The tenants' testify that the bills provided show a large leap in the utilities which was caused by a water leak due to a faulty pressure valve which left water draining into an outside drain. The tenant DR testifies that they complained to the city about the higher bills and the City did do a revised bill for only one of the months reducing that bill by \$700.00. The City confirmed that one family could not possible use that much water. The tenants testify that they also notified the landlord in writing about this problem but the landlord failed to act. The tenants testify that they do not have a record as to how much they paid in these excessive water bills but as this was the landlord's responsibility then the tenants should not owe much if anything to the landlord.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlords claim for unpaid rent I refer the parties to Section 26 of the Act which 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.

As the tenants do not dispute that they owe rent for April of \$600.00, for May of \$2,000.00 and for June up to June 15, 2013 of \$1,000.00, I find the landlord is entitled to a Monetary Order to recover the unpaid rent to a total amount of \$3,600.00.

I therefore find the landlord is also entitled to keep the security deposit of \$1,000.00 pursuant to s. 38(4)(b) of the *Act*. This amount will be offset against the rent arrears.

With regard to the landlords claim for utilities of \$2,500.00; the landlord has not provided any evidence to show how much utilities are outstanding. The tenants have provided a few utilities bills to show a comparison between the old and new bills and to show a reduction was given on one of the water bills by the City. When a landlord makes a claim of this nature then the burden of proof falls to the landlord to provide corroborating evidence to satisfy the burden of proof. As the landlord has failed to do so I cannot establish the amount of utilities outstanding and therefore this section of the landlords claim is dismissed.

As the landlord has been partially successful with his monetary claim I find the landlord is entitled to recover the \$50.00 filing fee from the tenants pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord for the following amount:

Unpaid rent	\$3,600.00
Filing fee	\$50.00
Less security deposit	(-\$1,000.00)
Total amount due to the landlord	\$2,650.00

I have reviewed all documentary evidence and accept that the tenants have 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 tenants on May 07, 2013. The Notice states that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not pay the outstanding rent within five days but the tenants did apply to dispute the Notice on May 10, 2013.

Based on the foregoing, I find that the landlord has established a claim for unpaid rent and is therefore entitled to an order of possession pursuant to section 55 of the *Act*. As the tenants have taken steps to vacate the property the landlord may serve this Order upon the tenants in the event the tenants do not fully vacate and return the keys.

With regard to the tenants claim to cancel the Notice to End tenancy for unpaid rent; as the landlord has established that rent is outstanding the tenants application to cancel the Notice to End Tenancy is dismissed.

Conclusion

The tenant's application to cancel the 10 Day Notice to End tenancy dated May 07, 2013 is dismissed without leave to reapply. The Notice remains in force and effect.

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 **\$2,650.00**. The order must be served on the Respondents 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 tenants. This order must be served on the Respondents 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: June 10, 2013

Residential Tenancy Branch

