



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order of Possession for unpaid rent or utilities; for a Monetary Order for unpaid rent or utilities; and to recover the filing fee from the tenant for the cost of this application.

At the outset of the hearing the parties agreed that the tenants are no longer residing in the rental unit, and therefore, the landlord withdraws the application for an Order of Possession.

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 provided documentary evidence to the Residential Tenancy Branch and some of this evidence to the other party in advance of this hearing by e-mail. The tenant described in detail the evidence he did receive by e-mail from the landlord. The remainder of the landlord's documentary evidence not received by the tenant has not been considered for this hearing and the landlord's sworn testimony concerning this evidence was taken.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for unpaid rent or utilities?

Background and Evidence

The parties agree that this tenancy started with the previous landlord on November 01, 2011. This landlord took over the tenancy when they purchased the property in April, 2012 and a new tenancy agreement was entered into between these parties. Rent for this unit was \$1,500.00 per month and was due on the 1st day of each month in advance. The tenants paid a security deposit of \$725.00 on November 01, 2011.

The landlord testifies that the tenants failed to pay rent for June, July and August, 2013. The landlord later amended this statement to include May, 2013. The landlord testifies that as the landlord was currently living in China the landlord served the tenants with a 10 Day Notice by e-mail on August 12, 2013. When the landlord arrived in Canada the landlord went to the rental unit and tried to serve the tenants with the same 10 Day Notice in person but as there was no one at home the landlord posted this Notice to the door of the rental unit on August 22, 2013.

The landlord testifies that the tenants had five days to pay the rent or file an application to dispute the Notice or the tenancy would end on August 30, 2013. The landlord has provided two copies of a 10 Day Notice in evidence. One copy is dated August 12, 2013 and one copy is dated August 16, 2013. The landlord testifies that the tenant paid \$1,500.00 on August 09, 2013 and \$100.00 on August 10, 2013. Currently the outstanding rent is \$4,400.00.

The landlord testifies that the tenants failed to pay a water and garbage bill from April to July, 2013. The landlord seeks to recover the cost of this bill of \$289.88.

The tenant disputes the landlord's testimony. The tenant testifies that they did not receive an e-mail copy of the 10 Day Notice and there was not a copy of a 10 day Notice posted to the door of the rental unit. The tenant agrees that they did not pay the rent for May, June, July and August on the day the rent was due. The tenant agrees that they paid a total of \$1,600.00 in August, 2013. The tenant disputes that they should

have to pay rent for August as the landlord had given the tenants an e-mail telling the tenants that they must vacate the unit because the landlords wanted to move into the unit on September 01, 2013. A copy of this e-mail has been provided in evidence.

A discussion took place with the parties about whether or not a valid legal Two Month Notice was served upon the tenants. The tenant was insistent that the landlord had provided a Two Month Notice but upon examination of the e-mail this was not a valid legal Notice. The tenant testifies that they moved from the rental unit because of the Notice and the landlord should therefore be responsible for the tenants moving costs and compensation of one month's rent.

The landlord agrees that an e-mail was sent to the tenants asking them to move out at the end of August as the landlord was coming to live in the unit. The landlord testifies that the landlord did not serve the tenant with a Two Month Notice to End Tenancy,.

The tenant disputes that they should have to pay the utility bill for April to July. The tenant testifies that when they moved out on September 01, 2013 they left the Hydro, gas and phone on in their name in the rental unit so the landlord would have these facilities when the landlord moved into the property. The tenant testifies that he has not yet received these bills for this period but the landlord should have put these utilities into the landlords name from September 01, 2013. The tenant seeks to have the landlords claim for utilities offset against any utility bills the tenants may receive for the period of September, 2013.

The landlord disputes the tenants claim to have Septembers utilities offset against the utilities owed by the tenant for April to July. The landlord agrees that when the tenants get the utility bills for September and up to the date the landlord put the utilities into her own name that the tenants can send them to the dispute address and the landlord will then reimburse the cost of those utilities to either the tenant or directly to the utility companies.

The tenant agrees that the landlord may keep the security deposit of \$725.00 to offset against any amount owed for rent.

The tenant raises a question to the landlord and asks the landlord if this is the landlord (YZ). The landlord responds that she is (YZ). The tenant questions the landlord about when they first met what does the tenant look like, what does the tenants wife look like, how old are the tenants and did the landlord meet the tenants daughter. The landlord responds that they met one and half years ago, the landlord cannot describe the tenant but the tenants are 50 to 60 years old. The landlord testifies that she did not met the tenants daughter but know that they have a daughter.

The tenant testifies that he does not believe that the person attending this hearing is the landlord YZ.

Analysis

I will first deal with the tenants question raised about whether or not the person attending the hearing is the actual landlord YZ. The tenant questioned the landlord but I have no evidence from the tenant that this is not the landlord taking part in this hearing.

As the landlord no longer requires an Order of Possession of the rental unit as the tenants have vacated the rental unit on September 01, 2013 I am, not prepared to deal with the 10 Day Notice. I will state however to clear up the matter of service of this document, that it is one person's word against that of the other regarding service of this Notice. The burden of proof would fall to the landlord to show that the Notice was posted to the door of the rental unit and e-mail is not a recognised form of service for a Notice to End Tenancy. As the landlord has no proof that the Notice was served as stated then I cannot accept that the tenants were served a 10 Day Notice. This matter however, has no bearing on whether or not the tenants owe rent.

Therefore with regard to the landlords claim for unpaid rent; s. 26 of the *Residential Tenancy 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.

The tenant does not dispute that they failed to pay rent for May, June, July and August and the parties agree that the tenant paid \$1,700.00 in August. The landlord offset that payment against the outstanding rent for May and \$200.00 from the remainder of the outstanding rent.

The tenant argues that as the landlord served the tenants with an e-mail telling the tenants to vacate the rental unit that the tenants are entitled to a month's rent in compensation for a two month notice. I have no evidence before me that a valid and legal Two Month Notice was served upon the tenants pursuant to s. 49 of the *Residential Tenancy Act*. Consequently the tenants are not entitled to receive any compensation pursuant to s. 51 of the *Residential Tenancy Act* for a Notice that was never issued or served.

I find the landlord is entitled to recover the unpaid rent from the tenant to the sum of \$4,400.00. At the hearing the tenant agreed the landlord may keep the tenants security deposit of \$725.00 to offset against the unpaid rent. I have therefore deducted this sum from the landlord's monetary award and have issued a Monetary Order for the balance of **\$3,675.00** for unpaid rent.

With regard to the landlords claim for unpaid utilities of \$289.88; the tenant does not dispute that these utilities are owed. The tenant does however seek to offset these utilities for any utilities incurred after the tenants vacated the rental unit, and before the landlord had utilities put into their own name. The landlord would not agree to offset

these utilities therefore I find in favour of the landlords claim for unpaid utilities and award the landlord the sum of **\$298.88**.

As the landlord has been successful with their claim I find in favour of the landlords claim to recover the **\$50.00** filing fee from the tenant.

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 **\$4,023.88**. The order must be served on the Respondent and is enforceable through the Provincial Court 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: October 11, 2013

Residential Tenancy Branch

