



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MNR, MNSD, MNDC, FF

Introduction

Cross applications were scheduled to be heard on September 11, 2013 to deal with a tenant's application to cancel a Notice to End Tenancy for Unpaid Rent and a Landlord's Application for an Order of Possession for unpaid rent and cause; as well as, a monetary claim for unpaid rent and damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the tenant's security deposit.

On September 11, 2013 both parties appeared at the hearing and were provided an opportunity to make submissions and respond to the submissions of the other party. On that date the parties reached a mutual agreement for the tenant to vacate the rental unit by September 25, 2013. An Order of Possession was issued to the landlord and the tenant's file was closed.

The landlord's monetary claims were adjourned as the tenant claimed he had not received the landlord's Application for Dispute Resolution and evidence. The tenant cited problems with receiving registered mail at the secondary suite of the residential property since the post office would only attend the main door of the house which was rented to another tenant. The landlords were of the position the tenant was in possession of the landlords' hearing documents as they were left for him in the mailbox by the other tenant; however, the other tenant did not appear as a witness to attest to service. The landlords were also of the position that it was the tenant's failure to update his identification that was inhibiting his ability to pick up registered mail.

The tenant requested that the landlords' documentation be served upon him by posting them to his door. I ordered the landlords to (re)serve the landlord's Application and evidence package to the tenant by posting to the tenant's door.

The tenant also claimed to be in possession of an audio recording that was relevant to the landlord's monetary claims for unpaid rent but that he had difficulty transferring the recording to an acceptable format for serving digital evidence. I informed the tenant that

I would permit the tenant to submit the digital evidence during the period of adjournment. No such digital evidence was received.

At the reconvened hearing of October 29, 2013 the tenant did not appear. The landlords appeared and affirmed that the landlord's Application for Dispute Resolution and evidence packages were posted to the tenant's door, as ordered, on September 21, 2013. The landlords also asserted that the tenant continued to reside in the rental unit until September 29, 2013 despite their earlier mutual agreement. I was satisfied the tenant was served with the landlord's Application for Dispute Resolution and evidence as ordered and I continued to hear from the landlords at the reconvened hearing without the tenant present.

During the period of adjournment the landlords made another written submission to the Residential Tenancy Branch in an attempt to increase the monetary claim for damage and cleaning incurred after the tenant vacated. I did not accept the additional submission or amend the Application as the submission had not been served upon the tenant and because the landlords had not amended their Application for Dispute Resolution pursuant to the Rules of Procedure. The landlords were informed of their right to file another Application for Dispute Resolution in order to pursue further damages or loss.

Issue(s) to be Decided

1. Are the landlords entitled to recover unpaid and/or loss of rent and utilities as claimed?
2. Are the landlords authorized to retain the tenant's security deposit?

Background and Evidence

The tenancy commenced January 1, 2011 and the tenant paid a security deposit of \$625.00. The tenant was required to pay rent of \$1,250.00 on the 1st day of every month plus utilities.

The landlords are seeking compensation for unpaid and/or loss of rent of \$1,100.00 for July 2013; \$1,250.00 for August 2013; and \$1,250.00 for September 2013. Although the tenant had acknowledged non-payment of rent and agreed to move out by September 2013 I heard undisputed testimony from the landlords that the tenant did not vacate until September 29, 2013.

The landlords provided a ledger showing rent and utility payments received during 2013. A payment of \$700.00 was received July 1, 2013; however, \$550.00 of that payment was applied to rent that was still owing for the month of May 2013 leaving a balance outstanding of \$1,100.00 for the month of July 2013.

The landlords are also seeking to recover \$1,115.96 for utilities including an estimate of \$108.06 for the month of September 2013. The utilities were in the landlord's name and the tenancy agreement provides that water, electricity and heat are included in rent with a notation "35% utilities: heat, water, electricity" in the space provided for "additional information". The addendum to the tenancy agreement also provides that the tenant would pay the landlord 35% of utilities bills, or an estimate based on previous usage rates. The landlords submitted that the tenant had been paying an estimated sum of \$140.00 per month toward utilities but March 2013 was the last month the tenant made such a payment. The landlord provided a spreadsheet of the utilities consumed, or estimated for the most recent months, and payments received from the tenant during from 2010 through 2013.

Analysis

A tenant is required to pay rent when due, pursuant to the terms of their tenancy agreement. Upon review of: the tenancy agreement, the landlord's ledger, 10 Day Notices issued to the tenant and upon consideration of the testimony provided to me, I find landlords entitled to recover unpaid and/or loss of rent from the tenant for the months of July 2013 through September 2013 in the amounts claimed.

Upon review of the tenancy agreement, and the addendum that formed part of the tenancy agreement, I find the tenant was obligated to pay the landlords 35% of water, electricity and heat costs. Upon review of the landlords' ledger and spreadsheet showing utilities consumed, or as estimated, and the payments received I accept the landlords' submissions that the tenant owes the landlords utilities of \$1,115.96 for the period up to and including the month of September 2013.

As the landlords were successful in their claims against the tenant, I award the filing fee to the landlords. I also authorize the landlords to retain the tenant's security deposit in partial satisfaction of the amounts owed to the landlords.

In light of the above, the landlords are provided a Monetary Order in the amount calculated as follows:

Unpaid and/or Loss of Rent: July – September 2013	\$3,600.00
Utilities	<u>1,115.96</u>
Sub-total	\$4,715.96
Plus: filing fee	50.00
Less: security deposit	<u>(625.00)</u>
Monetary Order	\$4,140.96

To enforce the Monetary Order it must be served upon the tenant and may be filed in Provincial Court (Small Claims) to enforce as an Order of the court.

Conclusion

The landlords have been authorized to retain the tenant's security deposit and have been provided a Monetary Order for the balance of \$4,140.96 to serve and enforce as necessary.

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: November 27, 2013

Residential Tenancy Branch

