



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MND, MNR, MNSD, MNDC, FF, CNR, DRI, MT, O, SS

Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

First of all it is my decision that I will not deal with all the issues that the parties have put on their applications. For claims to be combined on an application they must related.

Not all the claims on these applications are sufficiently related to the main issue to be dealt with together.

I therefore will deal with the landlords request for an Order of Possession, the landlords claim for outstanding rent and utilities, the landlord's request for late fees and NSF fees, and the landlords request for recovery of the filing fee and I dismiss the remainder of the landlords claims with liberty to re-apply.

I will also deal with the tenants request to cancel a Notice to End Tenancy, and I dismiss the remainder of the tenant's claims with liberty to re-apply.

Background and Evidence

The landlord's testified that:

- The tenant failed to pay the December 2013 rent, and therefore on December 13, 2013, a 10 day Notice to End Tenancy was sent to the tenant by registered mail.
- The tenant failed to comply with that notice, and failed to pay any further rent and therefore on January 23, 2014 they applied for dispute resolution.
- The tenant has not paid any rent now for the months of December 2013, January 2014, or February 2014.

• In the tenancy agreement the tenant is required to pay all utilities, however she has also failed to pay any utilities from August 2013 through to today's date. They are therefore requesting an Order of Possession for as soon as possible and a Monetary Order as follows:

December 2013 rent outstanding	\$965.00
January 2014 rent outstanding	\$965.00
February 2014 rent outstanding	\$965.00
Dishonored cheque fees \$30.00 X 3	\$90.00
Late payment fees \$50.00 X 3	\$150.00
BC Hydro August 2 to October 2	\$103.10
BC Hydro October 3 to December 3	\$461.21
BC Hydro December 3 to December 27	\$233.36
Fortis BC gas August 2013	\$24.84
Fortis BC gas September 2013	\$16.69
Fortis BC gas October 2013	\$13.17
Fortis BC gas November 2013	\$27.60
Fortis BC gas December 2013	\$26.53
Filing fee	\$100.00
Total	\$4141.50

The tenant testified that:

- The landlord had agreed to hold the November 2013 rent until the spring, however the landlord reneged on that agreement and attempted to deposit both the November 2013 and December 2013 rent cheque at the same time.
- Only one of the cheques was honored, and since the landlord had agreed to hold the November 2013 rent, and that means it was the December 2013 rent cheque that was honored and therefore when the Notice to End Tenancy was given there was no rent outstanding for December 2013.
- She does agree that at this time there is three months rent it has not been paid, and she has not paid the utilities as claimed by the landlord, however she has decided to withhold that money to try and force the landlord to do needed repairs.
- She therefore believes the Notice to End Tenancy should be canceled and she should not have to pay any further rendered utilities until the landlords resolve the issues with the rental unit.

In response to the tenant's testimony the landlord's testified that:

- They did agree to hold off on November 2013 rent; however it was on the condition that the tenant paid all the outstanding utilities.
- The tenant failed to pay the outstanding utilities, and in fact refuses to do so and therefore the tenant did not meet the conditions for them holding the November 2013 rent.
- They therefore deposit the November 2013 rent cheque and December 2013 rent cheque, and it was the December 2013 rent cheque that was not honored.

- Therefore their Notice to End Tenancy is a valid notice as, the December 2013 rent was outstanding at the time it was given, and is still outstanding.

Analysis

It's my finding that the December 2013 rent has not been paid, and had not been paid at the time that the 10 day Notice to End Tenancy was given.

The tenant has argued that the December 2013 rent was paid and it was the November 2013 rent is outstanding, however it's my finding that by failing to pay the outstanding utilities the tenant had reneged on the agreement and therefore the landlords were no longer obligated to hold off on the November 2013 rent.

Therefore I will not be canceling the Notice to End Tenancy, and I will be issuing an Order of Possession to the landlords.

It's also my finding that the tenant does not have the right to withhold rent or utilities from the landlord without first getting an order from through the Residential Tenancy Branch allowing her to do so.

The tenant is therefore obligated to pay all the outstanding rent and utilities as claimed by the landlords and I therefore allow that portion of the landlords claim.

The Act also allows landlord to claim late fees, and NSF fees, however only to a maximum of \$25.00 per month, as the Residential Tenancy Regulations limit these fees to \$25.00 per month. I will therefore allow \$75.00 in late fees, and \$75.00 in NSF fees.

I also allow one half of the landlords claim for the filing fee, as the total amount I have allowed is less than the \$5000.00 at which the fee doubles from \$50.00 to \$100.00.

Therefore the total amount of the claim that I have allowed is as follows:

December 2013 rent outstanding	\$965.00
January 2014 rent outstanding	\$965.00
February 2014 rent outstanding	\$965.00
Dishonored cheque fees \$30.00 X 3	\$75.00
Late payment fees \$50.00 X 3	\$75.00
BC Hydro August 2 to October 2	\$103.10
BC Hydro October 3 to December 3	\$461.21
BC Hydro December 3 to December 27	\$233.36
Fortis BC gas August 2013	\$24.84
Fortis BC gas September 2013	\$16.69
Fortis BC gas October 2013	\$13.17
Fortis BC gas November 2013	\$27.60

Fortis BC gas December 2013	\$26.53
Filing fee	\$50.00
Total	\$4001.50

Conclusion

Tenant's application

The tenants request to cancel a Notice to End Tenancy is dismissed without leave to reapply.

The remaining claims on the tenant application are dismissed with leave to reapply.

Landlord's application

I have issued an Order of Possession to the landlord that is enforceable two days after service on the tenant.

I have allowed \$4001.50 of the landlords claim, and I therefore Order that the landlord may retain the full security deposit of \$945.00 and I have issued an Order for the tenant to pay \$3056.50 to the landlords.

The landlord's claims for damages are dismissed with leave to reapply.

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: February 12, 2014

Residential Tenancy Branch

