



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GATEWAY PROPERTY MANAGEMENT CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord for: an Order of Possession and a Monetary Order for unpaid rent or utilities; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement; and to recover the filing fee from the Tenants for the cost of the Application.

An agent for the Landlord and both Tenants appeared for the hearing; however, the female Tenant was unable to remain on the conference call as she was looking after her child which was interfering in the proceedings. As a result, the female Tenant exited the call and the male Tenant continued the testimony on behalf of both Tenants.

The Tenant confirmed receipt of the Notice of Hearing documents and the Landlord’s evidence prior to the hearing.

At the start of the hearing, with the consent of both parties, I corrected the order of the male Tenant’s name on the Application which was incorrectly reversed by the Landlord on the Application. This was done on the authority afforded to me by Section 64(3) (c) of the Act.

At the start of the hearing the Landlord’s agent requested that the Tenants’ security deposit be used to offset against his monetary claim for unpaid rent.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession for unpaid rent?
- Is the Landlord entitled to a Monetary Order for unpaid rent and utilities?
- Is the Landlord entitled to keep the Tenants’ security deposit in partial satisfaction of his monetary claim?

Background and Evidence

Both parties agreed that this tenancy started on January 1, 2013 for a fixed term due to expire on March 31, 2013. After this time, the tenancy continued on a month to month basis as per the written tenancy agreement. At the start of the tenancy, on December 29, 2012, the Tenants paid \$375.00 to the Landlord as a security deposit which the Landlord still retains. Rent was established at the start of the tenancy in the amount of \$750.00 which was then increased, through a Notice of Rent Increase, to \$765.00 which is payable by the Tenants on the first day of each month.

The Landlord's agent testified that by January 2014, the Tenants were in rent arrears in the amount of \$300.00, as well as the Landlord incurring a \$25.00 insufficient funds fee for a returned cheque issued by the Tenants during the tenancy. The Tenants then failed to pay rent on March 1, 2014.

As a result, the Landlord's agent personally served the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice"), on March 3, 2014. The Notice was provided as evidence and shows an expected date of vacancy of March 14, 2014, due to \$1,090.00 in unpaid rent which had accumulated throughout the tenancy and was due on March 1, 2014.

The Landlord testified that the Tenants also failed to pay rent for the month of March, 2014 in the amount of \$765.00 and also discovered that the Tenants have not paid utilities which are still outstanding. As a result, the Landlord seeks an Order of Possession and a Monetary Order for the above amounts.

The Tenant testified that they had not paid \$300.00 for rent which had accumulated from 2013 and admitted to not paying rent for March and April, 2014. The Tenant testified that they had not paid rent because the Landlord had failed to replace an old and moldy carpet in the rental suite which he had promised to do so at the beginning of the tenancy. The Tenant testified that he has a child and that this was a big concern for his child's welfare.

The Tenant testified that they were in the process of moving out which was confirmed by the Landlord's agent. The Tenant also testified that he was aware that there were outstanding utilities which he would pay before leaving the tenancy. However, neither party could confirm the exact amount of utilities that were outstanding for the tenancy.

The Landlord's agent and the Tenant confirmed that \$200.00 towards rent had been paid by the Tenants on March 16, 2014 for which the Landlord issued the Tenant with a

receipt stating that the money was only being accepted for the use and occupancy of the rental suite.

Analysis

Having examined the Notice, I find that the contents on the approved form complied with the requirements of the Act.

Section 46(4) and (5) of the Act states that within five days of a Tenant receiving a Notice, the Tenant must pay the overdue rent or make an Application to dispute the Notice; if the Tenant fails to do either, then they are conclusively presumed to have accepted the Notice and they must vacate the rental unit on the date to which the Notice relates.

The Tenants confirmed receipt of the Notice on March 3, 2014 and therefore, had until March 8, 2014 to pay **all** the overdue rent or apply to dispute the Notice as required by the Act and the instructions given to the Tenants on the Notice. However, the Tenants did neither.

Section 26(1) of the Act requires a Tenant to pay rent on time when it is due under a tenancy agreement whether or not the Landlord complies with the Act. In this case, I find that the Act does not allow the Tenants to withhold rent for the reasons presented by the Tenant during the hearing.

As a result, I find that the Tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice and therefore, the Landlord is entitled to an Order of Possession.

In relation to the Landlord's monetary claim, I award the Landlord the unpaid rent arrears for \$300.00 and for March and April, 2014. After deducting the \$200.00 paid by the Tenants on March 16, 2014, the total amount due to the Landlord in unpaid rent is **\$1,630.00**.

In relation to the Landlord's claim for the \$25.00 returned cheque charge, Section 7(d) of the *Residential Tenancy Regulation* allows a Landlord to charge a fee of no more than \$25.00 for the return of a Tenant's cheque by a financial institution which is documented in a tenancy agreement. In this case, I find that the Landlord was unable to show that the tenancy agreement allowed for the provision of this fee. Therefore, I dismiss this portion of the Landlord's claim.

I also dismiss the Landlord's claim for unpaid utilities as the Landlord and Tenant were unable to determine the exact amount of utilities that were outstanding. As the Tenant

testified that these would be paid at the end of the tenancy, the Landlord is provided with leave to reapply for unpaid utilities if the Tenants fail to pay them at the end of the tenancy.

As the Landlord has been successful in this matter, I award the Landlord the **\$50.00** filing fee for the cost of this Application pursuant to Section 72(1) of the Act.

Therefore, the total amount payable by the Tenant to the Landlord is \$1,680.00.

As the Landlord already holds a \$375.00 security deposit and requested to keep the Tenants' security deposit during the hearing, I order the Landlord to retain this amount in partial satisfaction of the claim awarded pursuant to Section 38(4) (b) of the Act. As a result, the Landlord is awarded \$1,305.50.

Conclusion

For the reasons set out above, I grant the Landlord an Order of Possession effective **2 days after service on the Tenants**. This order may then be filed and enforced in the Supreme Court as an order of that court if the Tenants fail to vacate the rental unit.

I also grant the Landlord a Monetary Order pursuant to Section 67 of the Act in the amount of **\$1,305.00**. This order must be served on the Tenants and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court if the Tenants fail to make payment.

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: April 28, 2014

Residential Tenancy Branch

