



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF, MT, CNR, RP

Introduction

This hearing dealt with applications from both the landlords and the tenants under the *Residential Tenancy Act* (the *Act*). The landlords applied for:

- an Order of Possession for unpaid rent and utilities pursuant to section 55;
- a monetary order for unpaid rent and utilities pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- more time to make an application to cancel the landlords' 10 Day Notice to End Tenancy for Unpaid Rent Utilities (the 10 Day Notice);
- cancellation of the landlords' 10 Day Notice pursuant to section 46; and
- an order to the landlord to make repairs to the rental unit pursuant to section 33.

The tenant did not attend this hearing, although I waited until 1:48 p.m. in order to enable her to connect with this teleconference hearing scheduled for 1:30 p.m. The landlords attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Rule 10.1 of the Rules of Procedure provides as follows:

10.1 Commencement of the dispute resolution proceeding The dispute resolution proceeding must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the dispute resolution proceeding in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

In the absence of the tenant's participation in this hearing or any evidence from the tenant, I order her application dismissed without liberty to reapply.

The male landlord (the landlord) testified that he sent the tenant a copy of the landlords' dispute resolution hearing package by registered mail on February 20, 2014. He entered into written evidence a copy of the Canada Post Tracking Number and Customer Receipt confirming his registered mailing of these documents to the tenant. He testified that his hearing package has been returned to him by Canada Post as undelivered. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlords' hearing package on February 25, 2014, the fifth day after its registered mailing.

At the commencement of this hearing, the landlord testified that the tenant vacated the rental unit on the evening of April 1, 2014, leaving her key to the rental unit for him the following day. As the landlords already have possession of the rental unit, the landlord withdrew the landlords' application for an Order of Possession. The landlords' application for an Order of Possession is hereby withdrawn.

Issues(s) to be Decided

Are the landlords entitled to a monetary award for unpaid rent and utilities? Are the landlords entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Are the landlords entitled to recover the filing fee for their application from the tenant?

Background and Evidence

The landlords entered into written evidence a copy of the Residential Tenancy Agreement (the Agreement) the parties signed on September 27, 2013, for a one-year fixed tenancy that was to commence on October 1, 2013. According to the terms of the Agreement, monthly rent was set at \$1,350.00, payable in advance on the first of each month, plus one-half of the hydro and gas costs for this rental unit on the main floor of a two unit rental property. The landlords continue to hold the tenant's \$675.00 security deposit paid on September 13, 2013.

The landlords entered written evidence that on February 5, 2014, the tenant paid \$1,050.00 of the \$1,350.00 in monthly rent that became due on February 1, 2014. At that time, the landlord attempted to hand deliver the 10 Day Notice to the tenant. The landlords' 10 Day Notice identified \$300.00 in rent remaining owing from February 2014 and \$158.79 in unpaid utilities owing from January 28, 2014. As the landlord maintained that the tenant refused to accept this Notice, he posted the 10 Day Notice on the tenant's door at 5:20 p.m. on February 5, 2014. The landlord entered into written evidence his signed Proof of Service statement to this effect. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlords' 10 Day Notice on February 8, 2014, the third day after its posting.

The landlord entered written evidence that he received notification that the tenant had attempted to make an email transfer of the requested \$458.79 at approximately 7:20 a.m. on February 14, 2014. The landlord has not accepted this transfer of funds.

The landlords' original application for a monetary award of \$2,100.00 included the following:

Item	Amount
Unpaid Rent and Utilities Owing as of February 18, 2014	\$459.00
Unpaid March 2014 Rent	1,350.00
Total of Above Items	\$1,809.00

The landlord also entered into late written evidence a copy of an updated account of the status of the amounts the landlords maintain were owing from this tenancy. This document identified total rent of \$1,695.00 and utilities of \$415.96 owing (January 2014 - \$158.79; February 2014 - \$152.41; and March 2014 - \$104.76). From this total of \$2,110.96, the landlords deducted the \$1,050.00, they continue to hold from the Ministry of Social Development paid on the tenant's behalf and accepted for use and occupation only. This resulted in an outstanding amount of \$1,060.96 for unpaid rent and utilities. At the hearing, the landlord testified that he had not been able to serve this late written evidence to the tenant as she vacated the rental unit before he was able to do so, and has not left her forwarding address. I advised the landlord that I could not take this late written evidence into account, as it has not been served to the tenant.

The landlords' calculation also included damages totalling \$670.00. They provided a detailed breakdown of their expenses in this regard for such items as cleaning, repairs, and painting. However, as I noted at the hearing, the landlords have not identified any provision for a claim for damage in their original claim and have not amended their original application. The landlords' claim for a monetary award for damage is not properly before me. To proceed with a consideration of the landlords' claim for damage would deny the tenant a fundamental right to natural justice. As I find that the tenant has not been given an adequate opportunity to consider and address the landlords' late attempt to add a monetary claim for damage to this application, I dismiss this portion of the landlord's request with leave to make a separate application for a monetary award for damage.

At the hearing, the landlord testified that the unpaid rent of \$300.00 and the \$158.79 in unpaid utilities identified as owing in the 10 Day Notice remain unpaid. The landlord said that the Ministry of Social Development has issued payments of \$1,050.00 to the

landlords for each of February and March 2014. The landlord testified that the landlords accepted these payments for use and occupation only. The landlord said that \$300.00 of the tenant's rent remains unpaid for March 2014. He also requested a pro-rated rent payment of \$45.00 for the tenant's failure to vacate the rental unit by the end of the month, thus extending her tenancy by one unauthorized day.

Analysis

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. There is undisputed evidence that the tenant did not pay \$300.00 of her rent for either February or March 2014. I also find that there is undisputed written evidence that the tenant did not pay the \$158.79 in utilities that were owing for this tenancy as of February 18, 2014, the date of the landlord's application for dispute resolution.

Under these circumstances, I issue a monetary award in the landlords' favour in the amounts of \$300.00 for unpaid rent for each of February and March 2014. I also allow the landlords' requested \$45.00 claim for unpaid rent for unpaid rent for the first day of April 2014.

I issue a monetary award in the amount of \$158.79 for unpaid utilities identified as owing in the landlords' 10 Day Notice.

Although there may indeed be additional unpaid utilities owing as a result of this tenancy, the landlord did not enter into written evidence copies of these bills, as they had not yet been received when the landlords applied for dispute resolution. Under these circumstances, I allow the landlords leave to apply for unpaid utilities arising out of this tenancy that came due after the landlords' application for dispute resolution was submitted.

I allow the landlords to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award issued in this decision. No interest is payable over this period. As the landlords have been successful in this application, I allow them to recover their filing fee from the tenant.

Conclusion

The tenant's application is dismissed without leave to reapply.

I issue a monetary Order in the landlords' favour under the following terms, which allows the landlords to recover unpaid rent owing and claimed for February, March and the first

day of April 2014, unpaid utilities owing as of February 5, 2014, the filing fee, and to retain the security deposit for this tenancy:

Item	Amount
Unpaid February 2014 Rent	\$300.00
Unpaid Utilities Billed and Owing as of February 5, 2014	158.79
Unpaid March 2014 Rent	300.00
Unpaid Rent Claimed for April 1, 2014	45.00
Less Security Deposit	-675.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$178.79

The landlords are provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

The landlords' application for an Order of Possession is withdrawn.

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 09, 2014

Residential Tenancy Branch

