



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR OPR FF

Introduction:

This hearing dealt with an application by the landlord pursuant to the Residential Tenancy Act for orders as follows:

- a) A monetary order pursuant to Section 67;
- b) An Order of Possession pursuant to Sections 46, and 55; and
- d) An order to recover the filing fee pursuant to Section 72.

SERVICE:

Both parties attended and the tenant agreed they received the 10 day Notice to end Tenancy posted on the door and the 1 month Notice to End Tenancy and Application for Dispute Resolution by registered mail. I find that the tenant was properly served with the documents according to sections 88 and 89 of the Act.

Issue(s) to be Decided:

The tenant was issued a Notice to End Tenancy dated February 19, 2014 for unpaid rent and a further Notice to End Tenancy for cause dated March 1, 2014 to be effective March 31, 2014. The parties agreed that the tenants had vacated the premises on March 31, 2014 so an Order of Possession is no longer needed. The remaining issue is whether the landlord has proved on a balance of probabilities that they are now entitled to a Monetary Order for rental/utility arrears and filing fee?

Background and Evidence:

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. In evidence is a lease commencing the tenancy on June 1, 2013 at a rent of \$1385 per month payable on the 31st day of each month and noting a security deposit of \$690 was paid on May 30, 2013. This lease expired on December 31, 2013 and it is now a month to month tenancy.

The landlord testified that these tenants who occupy the main or upper floor of the home were responsible for 35% of the utilities but they had not paid some utilities so \$105 (corrected from \$108) was outstanding in January 2014 and after serving a warning letter, she served the 10 day Notice to End Tenancy for unpaid utilities. She said there is a further \$191.98 now owed for utilities plus \$1385 for unpaid rent in March 2014 and \$1385 for April 2014. She provided copies of the utility bills as evidence plus many email demands for rent and utilities. Her claim was set out on the Application for Dispute Resolution.

The tenant said they had paid the utilities and the rent for March 2014. Both parties agreed that the tenant has a book of receipts which the landlord signed each time they paid. The landlord said that she never signed the book to indicate that the tenants had paid the outstanding utilities or rent but the tenants claim that she did. They submitted no documents as evidence although they said they had the copies.

A neighbour tenant gave evidence of noise problems and a flood from upstairs. He said that their internet was frequently cut off because utilities were not paid. The tenant said that they were not providing internet and TV services to the downstairs tenant.

In evidence are registered mail receipts, utility bills, Notices to End Tenancy, photographs of damages, doctor's notes re. problems, three letters from neighbours outlining problems, such as loud music, conflict, yelling and screaming, many emails, Police file numbers and a lease. On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

An Order of Possession is no longer requested as the tenants vacated on March 31, 2014.

Monetary Order

I find that there are rental arrears in the amount of \$1385.00 owing for March 2014. Although the landlord also claims a monetary order for rental loss for April 2014, I find the tenants have vacated, the landlord has the opportunity to re-rent in April and it is her duty to mitigate the loss by re-renting as soon as possible; as the amount of rental loss is unknown at this time I find the landlord not entitled to a monetary order for rental loss for April 20. I give her leave to reapply within the legislated time limits when such loss or other damages are known.

I find the landlord also entitled to a monetary order for unpaid utilities in the amount of \$296.98. I examined the utility bills (hydro and gas) submitted as evidence and 35% of such bills would be \$305.42; the emails indicate that in January, \$125.50 was owed and

the tenant paid \$20 of this, leaving a balance of \$105 plus \$191.98 owed from the most recent bills. As the landlord is claiming somewhat less than 35% of the total of the outstanding amount, I allow the unpaid utilities as claimed.

The tenants contended they paid all rent and utilities and they had signed receipts in their book. The landlord said she signed their receipt book when they paid rent and utilities but maintained March rent and utilities as claimed were not paid. I find the landlord's evidence more credible and prefer it to the tenants' as she supported her evidence with utility bills noting "unpaid" on them and a number of emails demanding rent and utilities be paid including one dated March 3, 2014. A note from the tenant states that they will give the rent on condition they have a lease renewal and this was put on the door on March 3, 2014. No lease renewal was given so I find it inconsistent that the tenants would have paid rent anyway for March. Furthermore, the landlord's Application for Dispute Resolution set out the amounts claimed and the tenants said they received it two weeks ago; I find it improbable that the tenants would not have submitted receipts for rent and utility payments to counter the claim if they had them. Another tenant supported the landlord's evidence also as he said it seemed the upstairs tenants had problems paying utilities as their internet and TV were disconnected.

Conclusion:

I find the landlord entitled to a monetary order as calculated below. The landlord will retain the security deposit on trust for the tenants to be dealt with in accordance with section 38 of the Act after the tenants vacate. I find the landlord is entitled to recover filing fees paid for this application. I give the landlord leave to reapply for further rental loss and damages within the legislated time limits if necessary.

Calculation of Monetary Award:

Rent arrears March 2014	1385.00
Utility arrears	296.98
Filing fee	50.00
Total Monetary Order to Landlord	1731.98

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*.

April 1, 2014

Residential Tenancy Branch