



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF
 MT, CNR, RR

Introduction

This hearing was convened by way of conference call concerning a applications filed by the landlords and by the tenants. The landlords have applied for an order of possession and a monetary order for unpaid rent or utilities and to recover the filing fee from the tenants for the cost of the application. The tenants have applied for more time to make an application to dispute a notice to end tenancy than provided in the *Residential Tenancy Act*, for an order cancelling a notice to end tenancy for unpaid rent or utilities and for an order allowing the tenants to reduce rent for repairs, services or facilities agreed upon but not provided.

The parties all attended and gave affirmed testimony. The parties have also provided evidentiary material to the Residential Tenancy Branch and to each other prior to the commencement of the hearing. The parties were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

During the course of the hearing, the parties agreed that the tenancy will end on November 1, 2014 and the landlords will have an order of possession effective that date at 1:00 p.m.

Issue(s) to be Decided

The issues remaining to be decided are:

- Have the landlords established a monetary claim as against the tenants for unpaid rent or utilities?
- Have the tenants established that rent should be reduced for repairs, services or facilities agreed upon but not provided?

Background and Evidence

The first landlord testified that this month-to-month tenancy began on July 1, 2005 and the tenants still reside in the rental unit. Rent in the amount of \$650.00 per month is payable in advance on the 1st day of each month. The landlords moved onto the rental property in another unit in 2007, and the parties discussed that the tenants would pay either the phone or satellite bills, being approximately even costs. The satellite was hooked up around the time the landlords moved in. The tenants opted to pay for the phone, and the landlords paid for the satellite system. No written tenancy agreement was made, and the landlords did not collect a security deposit or a pet damage deposit from the tenants. The parties shared both the phone and the satellite in their respective units.

In about June 2013 the landlords started to pay for the phone by auto debit to ensure it would get paid and told the tenants to pay \$50.00 per month. The tenants agreed but they only paid for June to October, 2013, and then stopped paying. The landlords claim \$450.00 for 9 months. The phone was cancelled in August, 2014.

The tenants also fell into arrears of rent, having not paid for January, February, November or December, 2013 and also failed to pay any rent for January, February, March, and May, 2014. The tenants also owe \$250.00 for July, 2014 and \$350.00 for August, 2014. The tenants have not paid any rent for September or October, 2014. The landlords claim \$6,450.00 for unpaid rent from January, 2013 to September, 2014.

The landlords caused the tenants to be served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and a copy has been provided for this hearing. The notice is not dated but contains an effective date of vacancy of September 30, 2014. It states that the tenants failed to pay rent in the amount of \$5,800.00 that was due on August 31, 2014 and that the tenants failed to pay utilities in the amount of \$450.00 following written demand on August 31, 2014.

The landlord further testified that the landlords did not offer to reduce rent for anything. The tenant was told that if receipts were provided, the landlords would reimburse them for any improvements done to the rental unit. The tenants installed linoleum but have not provided any receipts. The landlords agreed to pay for it when they get a receipt.

The second landlord testified that when the landlords moved in they brought the satellite with them, and the agreement was that the tenants would pay for the phone, the landlords would pay for the satellite, and both would be used by the 2 units.

The first tenant testified that before the landlords purchased the rental building, they offered to move into the downstairs unit and the tenants could live in the upstairs unit. The landlords would pay half of the hydro and gas while they're in Canada, being every

year from April to October. There was no agreement about satellite or phone; there were other tenants downstairs at the time, and the tenants had their own phone. When the other tenants moved out in 2007, the landlords moved in. The satellite didn't arrive until 2009. The tenants had either cable or nothing until then. There never was an arrangement about it; the landlord said he was paying for it and the tenants may as well use it. The only agreement was that the landlords would pay for half the phone and they never paid it until November, 2013 or earlier.

The tenant further testified that the tenants paid for laminate, carpet, linoleum and other supplies, totalling about \$2,900.00 and up until last week no one asked him for a receipt. The tenants did other improvements as well, such as removing stairs, furnace repairs, a bathroom cabinet, trim, fixtures, plumbing supplies, faucets, drain parts, and paid someone a case of beer for a countertop. The tenant works at a carpet place so he got a good deal for carpet.

The tenant also testified that for 7 years, the tenants paid hydro and gas for 6 months of the year, totalling 42 months at \$125.00, for which the tenants claim \$5,000.00. Further, the landlords were supposed to pay half of the phone costs for 6 months of each year, for which the tenants claim \$1,800.00 for 2007 to 2013.

The second tenant testified that she has never been asked for receipts. She further testified that last year the landlords gave her \$150.00 to pay for painting a bedroom.

Analysis

It's clear in the testimony that the landlords resided on the rental property for some time during the tenancy, but not for all of it. It's unfortunate that no written tenancy agreement exists and it's clear that there has been no consistency with respect to the payment of utilities throughout the tenancy depending on when the landlords were in Canada or residing on the rental property. The landlords claim that the tenants were supposed to pay for the phone, and then the landlords reduced that cost to \$50.00 per month and the tenants owe \$450.00 for 9 months up until the date the landlords had the phone cut off. The tenants disagree and one of the tenants testified that the landlords were to pay a portion of the hydro but failed to do that. Where it boils down to one person's word over another, the claim has not been proven. I cannot find, in the circumstances that the landlords have established a claim for the phone, or that the tenants have established a claim as against the landlords for phone, hydro or gas.

I am satisfied, however that the landlords have established a monetary claim for unpaid rent in the amount of \$7,100.00 to the end of October, 2014. The tenants did not deny that the amounts specified by the landlords are true, and I find the landlord's testimony to be consistent with the evidence, specifically the notice to end the tenancy.

Although the landlord agreed that the tenants completed improvements on the rental unit, the landlord also testified that the tenants have not provided any proof of the

amounts by way of copies of receipts. The *Act* requires a landlord to pay for emergency repairs made by a tenant upon the tenant providing receipts to the landlords, and although not all of the improvements can be considered emergency repairs, the landlords have been reasonable in agreeing to pay for the costs. However, I find that the tenants have failed to establish the dollar amount they might be entitled to, and I dismiss the tenants' application. I leave it to the tenants to provide proof of costs to the landlords.

Since the landlords have been partially successful with the application, the landlords are also entitled to recovery of the \$100.00 filing fee.

Conclusion

For the reasons set out above, I hereby grant an order of possession in favour of the landlords effective November 1, 2014 at 1:00 p.m.

The tenants' applications for more time to dispute a notice to end tenancy and for an order cancelling the notice to end tenancy are hereby dismissed as withdrawn.

The tenants' application for an order reducing rent for repairs, services or facilities agreed upon but not provided is hereby dismissed without leave to reapply.

I hereby grant a monetary order in favour of the landlords as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$7,200.00.

These orders are final and binding and may be enforced.

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: October 31, 2014

Residential Tenancy Branch

