



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD
 CNR

Introduction

This hearing was convened by way of conference call concerning applications made by a landlord and by a tenant. The landlord has applied as against 2 tenants for an Order of Possession and a monetary order for unpaid rent or utilities and for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit. One tenant has applied for an order cancelling a notice to end tenancy for unpaid rent or utilities.

The parties attended and identified themselves as the parties to each of the applications, and the landlord was accompanied by her spouse, who did not testify. The parties provided evidentiary material prior to the commencement of the hearing to the Residential Tenancy Branch and to each other. The parties gave affirmed testimony and 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.

Issue(s) to be Decided

- Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent or utilities?
- Should the notice to end tenancy be cancelled?
- Has the landlord established a monetary claim as against the tenants for unpaid rent or utilities?
- Should the landlord be permitted to keep the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this month-to-month tenancy began on March 29, 2014 and the tenants still live in the rental unit. Rent in the amount of \$950.00 per month is payable on the 1st day of each month as well as \$30.00 for hydro per month and \$50.00 per month for natural gas. On March 15, 2014 the landlord collected a security deposit from the tenants in the amount of \$475.00 which is still held in trust by the landlords and no pet damage deposit was collected. A copy of the tenancy agreement has been provided.

The landlord further testified that the tenants are in arrears the sum of \$2,540.00, being November and December, 2014 rent in addition to \$640.00 for unpaid utilities for 8 months from May to December, 2014. The landlord forgot to include unpaid rent for June and October, 2014 in the amounts of \$50.00 and \$25.00 respectively, and neither of those amounts are included in the \$2,540.00.

On September 30, 2014 the landlord's husband gave the tenants a caution notice about the inconsistencies of rent payments. He also talked to the tenant who agreed it was a problem.

On November 21, 2014 the landlord served one of the tenants personally with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities but only gave 1 page of the 2-page form. The notice is dated November 21, 2014 and contains an expected date of vacancy of December 1, 2014 for unpaid rent in the amount of \$950.00 + \$75.00 that was due on November 1, 2014. The landlord testified that the last payment was on October 31, 2014 in the amount of \$225.00 and the tenant paid \$700.00 on October 3, 2014. Usually rent is paid in cash but the landlord hasn't issued receipts. No rent or utilities have been paid since the issuance of the notice. The landlord has also provided a letter to the Residential Tenancy Branch prepared for this hearing which sets out a schedule of when rent was paid. The schedule shows that \$950.00 was received on July 26, 2014 for July's rent; the landlord received \$300.00 on August 8 and \$650.00 on August 22, 2014 for August's rent; \$450.00 on September 5 and \$500.00 on September 19, 2014 for September's rent; \$700.00 on October 3 and \$225.00 on October 31, 2014 for October's rent and the tenants still owe \$50.00 for June and \$25.00 for October.

On November 26, 2014 the tenant asked if they could stay because they couldn't find a place to live. The landlord already had a new tenant and told the tenant that she would get back to her. When the landlord saw the tenant again, the landlord had another agreement for the tenant to sign, but the tenant refused saying that they had talked to someone at the Residential Tenancy Branch who told her not to pay the rent until after

this hearing. The landlord called the Residential Tenancy Branch and was told that wasn't possible.

The tenant testified that all that is owed for rent is December's and the tenants should get some relief for having no heat in the rental unit and loss of laundry facilities. The parties had a discussion and the tenant told the landlord that rent should be reduced starting in December.

The tenant further testified that he was always promised a receipt but never got one and the landlord always said that she wrote it down. On October 3, 2014 the tenant paid \$1,030.00 which included the utilities. On November 1, 2014 the tenant paid \$950.00 within the first week of November.

Analysis

The *Residential Tenancy Act* states that a notice to end a tenancy when given by a landlord must be in the approved form which includes both pages. In this case, the landlord has only served 1 page and therefore, I find that the landlord is not entitled under the *Residential Tenancy Act* to an Order of Possession, and I hereby cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issues on November 21, 2014 .

With respect to the landlord's claim for a monetary order, the landlord has not provided evidence of any records kept and has not issued receipts. The landlord testified that rent was generally paid in cash and she kept track but has not provided any evidence of how she kept track. The tenant testified that all that is owed is December's rent. The parties also disagree with respect to how much was paid in October and in November, 2014. Where a person makes a claim against another for a monetary order, the onus is on the claiming party to prove it. In the absence of any evidence, and where it boils down to one person's word over another, it has not been proven. The tenants do not disagree that rent is owed for December but expected some reduction for loss of facilities, such as heat and laundry. However, the tenants have not made such an application and therefore I can't consider it. The tenants agree that rent is owed for December and therefore I find that the landlord has established a monetary claim for \$950.00 for December's rent.

With respect to the landlord's claim for unpaid utilities, the tenant testified that he paid \$1,030.00 for October which included utilities and paid \$950.00 for November, but not the utilities. Therefore, I find that the landlord has established a monetary claim in the amount of \$160.00 for November and December, 2014.

Having found that the tenants owe \$1,110.00 for unpaid rent and utilities, the landlord is entitled to keep the security deposit in partial satisfaction of the claim. Since both parties have been partially successful with the applications I decline to order recovery of the filing fees.

I order the landlord to keep the security deposit of \$475.00 in partial satisfaction of the claim and I grant the landlord a monetary order for the difference in the amount of \$635.00.

Conclusion

For the reasons set out above, the landlord's application for an Order of Possession for unpaid rent or utilities is hereby dismissed.

The notice to end tenancy issued on November 21, 2014 is hereby cancelled and the tenancy continues.

I hereby order the landlord to keep the \$475.00 security deposit in partial satisfaction of the landlord's claim, and I grant a monetary order I favour of the landlord as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$635.00.

This order is 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: December 31, 2014

Residential Tenancy Branch

