



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: i) OPR, OPB, MNR, MNSD; ii) MT, CNR, LRE

Introduction

This hearing was scheduled in response to 2 applications: i) by the landlords for an order of possession for unpaid rent or utilities / an order of possession for breach of an agreement with the landlords / a monetary order as compensation for unpaid rent or utilities / and retention of the security deposit; and ii) by the tenants for more time to make an application to cancel a notice to end tenancy / cancellation of a notice to end tenancy for unpaid rent or utilities / and an order suspending or setting conditions on the landlords' right to enter the rental unit. Both parties attended and gave affirmed testimony.

The tenants testified that they vacated the unit on January 23, 2014 and that they do not presently have a forwarding address. The tenants also withdrew their application. The landlords withdrew their application for an order of possession. The tenants testified that they removed all their possessions from the unit, and that they did not return any keys to the landlords. The parties agreed that the landlords are now at liberty to change the locks to the rental unit.

The tenants do not dispute that they owe the full amount of rent for December 2014. However, as the tenants vacated the unit on January 23, 2015, they dispute that they owe the full amount of rent for January 2015. The tenants do not dispute that they owe the full amount of unpaid utilities for the period leading up to and including December 2014 (\$180.00) as well as January 2015 (\$170.00).

Issue(s) to be Decided

Whether the landlords are entitled to the remaining aspects of their application under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement the term of tenancy is from March 01, 2014 to February 28, 2015. Monthly rent of \$1,600.00 is due and payable in advance on the

first day of each month. Pursuant to clause # 5 of the addendum to the tenancy agreement, the parties agree that \$170.00 for utilities is due and payable in advance on the 15th day of each month. A security deposit of \$800.00 was collected.

The landlords issued a 10 day notice to end tenancy for unpaid rent or utilities dated December 27, 2014. The notice was served by way of posting to the unit door on December 28, 2014. A copy of the notice was submitted in evidence. Subsequently, while the tenants filed an application to dispute the notice on January 05, 2015, they made no further payment toward either rent or utilities and, as earlier noted, they vacated the unit on January 23, 2015 without providing a forwarding address.

Analysis

Based on the documentary evidence and the affirmed / undisputed testimony of the parties, I find that the tenants' application is withdrawn in its entirety. I also find that the landlords withdrew their application for an order of possession. The remaining aspects of the landlords' application and my related findings are set out below.

\$3,200.00: *(2 x \$1,600.00) unpaid rent for December 2014 and January 2015*

As the tenants do not dispute the landlords' claim for unpaid rent for December 2014, I find that the landlords have established a claim for the unpaid amount of \$1,600.00.

Section 26 of the Act addresses **Rules about payment and non-payment of rent**, and provides in part as follows:

26(1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Notwithstanding that the tenants vacated the unit on January 23, 2015, I find that the tenants remain liable for payment of the full amount of that month's rent. Specifically, I find that the landlords were unaware of when the tenants may vacate the unit following service of the 10 day notice in December 2014, and that when the tenants vacated on January 23, 2015, there was insufficient opportunity for the landlords to mitigate the loss of rental income for the balance of January 2015. Accordingly, I find that the landlords have also established a claim for unpaid rent for January 2015 of \$1,600.00.

\$350.00 (\$180.00 + \$170.00) unpaid utilities leading up to and including December 2014, in addition to January 2015

As the tenants do not dispute this aspect of the landlords' application, I find that the landlords have established entitlement to the full amount claimed.

\$50.00: *filing fee*

As the landlords have succeeded with their application, I find that they have established entitlement to recovery of the full filing fee.

Total Entitlement: \$3,600.00

Pursuant to section 72 of the Act I hereby order that the landlords retain the tenants' security deposit of **\$800.00**, and pursuant to section 67 of the Act I grant a **monetary order** in favour of the landlords for the balance owed of **\$2,800.00** (\$3,600.00 - \$800.00).

Conclusion

The tenants' application is withdrawn in its entirety.

The landlords' application for an order of possession is withdrawn.

I order that the landlords retain the tenants' security deposit, and pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlords in the amount of **\$2,800.00**.

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: January 26, 2015

Residential Tenancy Branch

