



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, CNR, MNR, MNSD, MNDC, FF, O

Introduction

This hearing dealt with two related applications. One was the landlord's application for an order of possession based upon a 10 Day Notice to End Tenancy for Non-Payment of Rent and a monetary order, including payment of the security deposit and pet damage deposit. The other was the tenant's application for an order setting aside the 10 Day Notice to End Tenancy.

At the hearing the parties agreed that the tenancy would end at 1:00 pm, March 16, 2015 and an order of possession would be granted to the landlord for that time and date. An Interim Decision dealing with the order of possession only has already been sent to the parties.

The balance of the hearing, and this decision, deals with the landlord's application for a monetary order only.

Issue(s) to be Decided

Is the landlord entitled to a monetary order and, if so, in what amount?

Background and Evidence

This tenancy commenced in June of 2014. The monthly rent is \$1650.00.

There was a previous hearing on January 5, 2015, between the parties on an application by the tenant for orders cancelling a 10 Day Notice to End Tenancy for Non-Payment of Rent, repairs, and compensation for failure to provide heat and access to living space.

The parties settled that application on the following terms:

1. "The parties have agreed to end the tenancy effective April 30, 2015 at 1:00 pm.
2. The landlord agreed that the tenant does not owe any rental arrears up to and including January 2015, as consideration for this settlement.

3. The tenant shall permit the landlord to have access to the unit as permitted by the act upon 24 hours written notice.”

The parties state that the issue of whether the Residential Tenancy Branch had jurisdiction over this dispute was discussed in the hearing but, in the end, the settlement agreement was achieved.

The tenant did not pay the February rent so the landlord served a new 10 Day Notice to End Tenancy for Non-Payment of Rent. The tenant disputed the notice by filing an application for dispute resolution within the time required.

Her arguments regarding the rent are:

- The Residential Tenancy Branch has no jurisdiction over this dispute.
- The settlement agreement does not specify that she is required to pay the February and March rent.
- Because of the poor condition of the rental unit and the landlord's alleged failures to comply with zoning and other regulatory requirements, “no rent should legally or ethically be collected” for the building.

In her written material and oral testimony the tenant listed various deficiencies with the unit, all of which pre-date the last hearing.

In addition to claiming the February and March rent the landlord also claimed payment of a security deposit and pet damage deposit, damages for late payment of rent in the amount of \$1000.00, and unpaid city utility bill in the amount of \$105.72.

The tenant says she never agreed to pay the city utilities and further, the landlord fraudulently put the account into her name.

The parties never signed a written tenancy agreement. The only particulars of the contract are set out in an e-mail from the landlord to the tenant dated May 29, 2015. Among other things it says: “Rent can be paid on the first of the month, beginning June 1 (\$1650.00/month) . . . You will be responsible for hydro (two meters) and gas. You will need to arrange with the City for garbage pick-up which is paid with the utility bill.”

The tenant says this e-mail is not clear that in addition to arranging for garbage pick-up she was also to pay for it.

There were two different invoices from the city filed, both dated September 30, 2014 for garbage collection for the period of July 1, 2014 to September 30, 2014, in the amount of \$105.72. A bill in the tenant's name was sent to the tenant by the city; a bill in the landlord's name was sent to the landlord by the city. The landlord says he did not make any arrangements with the city about the account.

Analysis

The principle of *res judicata* is that an issue that has already been decided by a court, tribunal or other decision making body, or could have been made by that body if the parties exercising reasonable diligence, had brought forward their whole case at that time, cannot be heard and decided for a second time.

At the last hearing the tenant raised the issues of jurisdiction and deficiencies. It is not stated in the decision whether she also brought up any alleged failure of the landlord to comply with the terms of their oral agreement or with zoning and other regulatory requirements but she could have. A decision was issued that not only assumed that the Residential Tenancy Branch had jurisdiction over this dispute but included a discount on the rent. That decision is binding on me, unless and until it is overturned on judicial review, on all issues that were raised or could have been raised by the tenant on that application.

The decision continued the tenancy to April 30, 2015. A term of any tenancy is that the tenant must pay the rent unless specifically ordered otherwise by an arbitrator (see section 26(1)).

I find that the tenant is responsible for the February and March rents. It was not until the hearing that the tenant gave any indication that it was her intention to move out of the unit before April 30. On a month-to-month tenancy the tenant must give at least one month's notice in writing of their intention to end a tenancy. This applies even where a tenant has been served with a 10 Day Notice to End Tenancy.

No decision is made with regard to the April rent. The landlord did not ask for it on his application for dispute resolution. In some circumstances a tenant in this situation may be liable for the next month's rent but any claim by a landlord is subject to the statutory duty imposed by section 7 to mitigate any damages.

The landlord's claim for payment of a security deposit and pet damage deposit is dismissed. Although a tenant's failure to pay the deposits within 30 days of the date they are required to be paid under the tenancy agreement is cause for ending a tenancy

within the meaning of s. 47 of the *Residential Tenancy Act*, the legislation does not permit collection of the deposit after a tenancy has ended.

The landlord's claim for damages is dismissed. The *Residential Tenancy Regulation* allows a landlord to collect a late payment fee to a maximum of \$25.00, only if the fee is specifically set out in the tenancy agreement.

With regard to the utility bill owed to the local municipality, based on the evidence before me I do not find any fraud on the part of the landlord. It appears that the city sent invoices to the registered owner and the occupant of the property. I do find that the landlord could have been clearer in the wording of his e-mail setting out the financial terms of their agreement. One of the rules of contract interpretation is that where there are two possible interpretations of a term of a contract the language is to be construed against the drafter of the contract. This is known as the "*contra preferentem*" rule. Accordingly the landlord's claim for utilities is dismissed.

As the landlord was substantially successful on his application and the tenant was not, I find that the landlord is entitled to reimbursement from the tenant of part of the fee he paid to file his application - \$50.00.

Conclusion

I find that the landlord has established a total monetary claim of \$3350.00 comprised of arrears of rent for February and March in the amount of \$3300.00 and \$50.00 of the filing fee paid by the landlord and pursuant to section 67 I grant the landlord a monetary order in this amount. If necessary, this order may be filed in Small Claims Court and enforced as an order of that court.

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: March 18, 2015

Residential Tenancy Branch

