



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord and both tenants. I note that the female tenant entered the teleconference several minutes after the start of the hearing but did participate fully after she entered.

At the outset of the hearing the parties agreed the tenants had vacated the rental unit. The landlord testified the tenants vacated the property on March 24, 2015 the tenants submit that they moved out on March 21, 2015. As such, an order of possession is no longer required by the landlord and I amend her Application to exclude the matter of possession.

Towards the end of the hearing the tenants submitted that they did not understand why this matter was set for one hearing when they had two distinct tenancies. The tenants submit that they knew each other before the tenancy began and that they viewed the rental property together. They stated that they decided that the male tenant would take the upstairs unit (for \$1,000.00 per month) and the female tenant would take the basement unit (for \$600.00 per month).

The tenants stated that the landlord did not put anything in writing until January 2015 at which time she had put them on the same tenancy agreement. They acknowledge that they usually would put their rent together and paid the landlord. Utilities were placed in the female tenant's name and the male tenant contributed monthly.

I note however, that at the start of the hearing when I clarified the terms of the tenancy the male tenant did not dispute the landlord's submission that rent was for \$1,600.00 or

that there were two different tenancies (one for \$1,000.00 and one for \$600.00 per month).

The landlord asserts that the tenants rented the full property and that they decided amongst themselves to set it up as they had done. The landlord submits that she had no idea how many people were living in the residential property or who they were.

In the case of verbal agreements, I find that where terms are clear and both the landlord and tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes.

As such, the party who alleges that the agreement was different than put forward have the burden to provide some evidence to establish that their version of the agreement is an accurate interpretation of what was agreed upon. In the case before me, the burden was on the tenants to provide corroborating evidence to show this was two separate tenancies. I find the tenants have failed to provide such evidence and I find that this was a single tenancy.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent and utilities and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 26, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agreed the tenancy began in August 2014 for a monthly rent of \$1,600.00 due on the 1st of each month with a security deposit of \$800.00 paid.

The landlord submitted into evidence a copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on February 12, 2015 with an effective vacancy date of February 22, 2015 due to \$1,000.00 in unpaid rent and \$134.00 in unpaid utilities following a written demand given on December 1, 2014.

The landlord submits the tenants failed to pay the full rent owed for the month of February 2015 and the amount of \$134.00 for gas utilities after the landlord provided a written demand letter on December 1, 2014 and that the tenants were served the 10

Day Notice to End Tenancy for Unpaid Rent personally on February 12, 2015. The tenants testified that the landlord did not give them a 10 Day Notice to End Tenancy for Unpaid Rent.

The Notice states the tenants had five days to pay the rent and utilities or apply for Dispute Resolution or the tenancy would end. The tenants did not pay the rent or utilities in full or apply to dispute the Notice to End Tenancy within five days.

The tenants agree that for the period between February and March 2015 they provided the landlord with \$600.00 towards rent but that they withheld any other amounts because they had been trying to get the landlord to fix mould and electrical problems in the residential property.

The tenants submitted that they felt that the property was unsafe to live in and that is why they moved out of the rental unit but that they couldn't move until such time as the found new places to live.

The landlord also seeks \$134.00 for unpaid gas utilities. The landlord did not provide a copy of a bill for any utilities. The tenants submit that if the landlord had provided them with a bill showing that they owed any utility amount they would have paid but she never did.

Analysis

Section 26 of the *Act* states that 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 the right under this *Act* to deduct all or a portion of the rent.

As the tenants have provided no evidence or testimony that to show that they had a right under the *Act* to deduct any amount from a rental payment, I find that the landlord is entitled to receive full rent for the months of February and March 2015.

In relation to the landlord's claim for gas utilities, I find the landlord has failed to provide any evidence to establish that there was a gas utility payment required by the tenants. As such, I dismiss this portion of the landlord's claim.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$2,625.00** comprised of \$2,600.00 rent owed and \$25.00 of the \$50.00 fee paid by the landlord for this application, as she was only partially successful in her claim.

This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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 25, 2015

Residential Tenancy Branch

