



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession and a monetary order. Both parties appeared and had an opportunity to be heard. At the beginning of the hearing the parties advised that the tenants had moved out of the rental unit and an order of possession was not required.

Issue(s) to be Decided

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

Background and Evidence

The landlord says this month-to-month tenancy started March 15, 2014; the tenant says it started April 14, 2014.

The landlord says a tenancy agreement and a move-in condition inspection report were completed and signed at the start of the tenancy and given to the tenant. He did not keep a signed copy of the tenancy agreement for his records; only the document on his computer. He printed an unsigned copy of the document as part of the evidence.

The tenant says they only signed and received a copy of the move-in condition inspection report. He pointed out that his name is misspelled on the tenancy agreement filed by the landlord and stated that he would never have signed an agreement where his name was spelled incorrectly.

The parties agreed that the monthly rent was \$900.00 and it was due on the 15th day of the month. They also agree that the tenants paid a security deposit of \$450.00.

The landlord testified that the agreement was that the tenants would be responsible for all utilities. The hydro bill was placed in the tenant's name and the tenants paid that account.

The landlord testified that at some point - when he realized the water bill was being sent to him - he spoke to the tenant about it. The tenant agreed to pay the water bill and gave the landlord their mailing address, which is not the same as the address of the rental unit, so the bill could be sent to him. The tenant refused to pay the late fee on the account so the landlord gave the tenant \$5.00 towards the late fee of \$6.51. The tenant testified that he accepted the money.

Sometime later the landlord received a notice from the local municipality that the water bill had not been paid and the outstanding account was going to be added to his taxes. When he spoke to the tenant the tenant said they should not have to pay for water and refused to pay the account.

The tenant testified that when the landlord first spoke to him that was the first time the water bill had been discussed. At first he agreed to pay for the water but after making some inquiries he reached the conclusion that water is an essential service and he should not have to pay for it. He also stressed that he did not have a written tenancy agreement that required him to pay for water.

The landlord filed three invoices from the municipality for residential water:

- July 24, 2014 for the period July 1, 2014 to September 30, 2014 - \$71.61
- October 23, 2014 for the period October 1, 2014 to December 31, 2014 - \$71.61
- January 20, 2014 for the period January 1, 2015 to March 31, 2014 - \$71.61

Each of the invoices is addressed to the landlord c/o the tenant at the tenants' mailing address and each of the invoices includes a late charge.

The landlord paid the full \$216.27 on March 3, 2015.

The landlord served the tenants with a 10 Day Notice to End Tenancy dated February 25, 2015.

The landlord says that he received \$825.00 for the rent due on February 15, 2015 in two separate installments: one payment of \$450.00 on or about February 17 and the second payment of \$375.00 a few days later. The tenant says he paid the full \$900.00 by direct deposit in two installments: one of \$525.00 on February 24 and the second of \$375.00 on March 2. Neither party filed any banking documents or receipts to support their testimony.

Both parties agreed that the tenants did not pay rent for the second half of March.

The landlord testified that he received conflicting oral statements from the tenants about when they intended to move out. The tenant said he advised the landlord by text message that they would be moving out at the end of March. Although a transcript of the text messages between the parties was filed by the landlord there are no dates for any of them.

The parties gave conflicting evidence about what attempts were made to arrange a move-out inspection. The landlord testified that when he went to the rental unit on April 1 or 2 the door was unlocked and the keys were on the counter. The parties also gave conflicting oral testimony about the condition of the rental unit at the end of the tenancy.

The tenants have not provided a forwarding address in writing to the landlord.

The landlord testified that he was able to re-rent the unit as of May 1, 2015.

Analysis

Water Bill

There is nothing illegal about an agreement that the tenant assume responsibility for the water used at the rental unit. Legally, it is the same as a tenant being responsible for the hydro, gas, Internet, cable or telephone services to a rental unit.

In this case the tenants are bound by the oral agreement that was made after the start of the tenancy. When the subject of the water bill was raised the tenants agreed to pay it and took steps to ensure that it was delivered to them. Accordingly, I find that the tenants are responsible for the water bill in the amount of \$214.83.

Balance of the Rent for the period February 15 to March 14

The only evidence regarding the payments made by the tenants is the conflicting oral testimony of the parties. As this is the landlord's claim the onus of proof is on the landlord to establish his claim in a balance of probabilities. Where there is conflicting oral testimony, the claimant must provide some additional evidence to tip the balance of probabilities in his favour. In this case this could have been receipts or banking records. As there is no evidence to tip the balance of probabilities in the landlord's favour this claim is dismissed.

Rent for March 15 to 30

The tenancy ended ten days after the date the tenants received, or are deemed by law to have received, the 10 Day Notice to End Tenancy for Non-Payment of Rent. A tenant who remains in possession of the rental unit after the tenancy has ended is responsible

for the rent on a per diem basis until the landlord recovers possession of the premises. Accordingly, the tenants are responsible for the rent to the end of March, a total of \$450.00.

Rent for April

As explained in *Residential Tenancy Policy Guideline 3: Claims for Rent and Damages for Loss of Rent*, if a month-to-month tenancy is ended by the landlord for non-payment of rent, the landlord may recover any loss of rent suffered for the next month as a notice given by the tenant during the month would not end the tenancy until the end of the subsequent month. Accordingly, I find that the tenants are responsible for the rent up to April 14, 2015, a total of \$450.00.

If the landlord was able to establish that the premises were un-rentable due to damage done of the tenants he is able to claim damages for loss of rent. However, the only evidence on this issue was the conflicting oral testimony of the parties. Accordingly, no award in favour of the landlord will be made for the period April 15 to April 30.

Filing Fee

As the landlord was substantially successful on his application he is entitled to reimbursement from the tenants of the \$50.00 fee he paid to file it.

Conclusion

I find that the landlord has established a total monetary claim of \$1164.83 comprised of rent for the period March 15 to April 14 in the amount of \$900.00; water bill in the amount of \$214.83, and the \$50.00 fee paid by the landlord for this application. I order that the landlord retain the deposit of \$450.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$714.83. This order may be filed in the 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: May 26, 2015

Residential Tenancy Branch

