



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, SS, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlords for a monetary order for unpaid rent or utilities; for an order permitting an alternate method of service, and to recover the filing fee from the tenants for the cost of the application.

Both landlords and one of the tenants attended the call and the tenant represented both tenants. The parties each gave affirmed testimony and were given the opportunity to question each other respecting the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Should the method of service of the landlords' documentation be ordered as sufficient under the *Residential Tenancy Act*?
- Have the landlords established a monetary claim as against the tenants for unpaid rent or utilities?

Background and Evidence

The first landlord testified that this fixed term tenancy began on September 1, 2014 and was to expire after one year and then revert to a month-to-month tenancy. However, the tenants moved out of the rental unit on November 30, 2014, having given the landlords written notice on October 31, 2014. Copies of the tenancy agreement and the written notice dated October 30, 2014 have been provided.

Rent in the amount of \$1,250.00 per month was payable in advance on the 1st day of each month. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$625.00 which is still held in trust by the landlords and no

pet damage deposit was collected. However, the tenants demanded that it be applied to the last month of rent and paid the other half only. The tenants have not provided the landlords with a forwarding address.

The tenants' notice to end the tenancy also stated that they would honour all utilities and would provide a forwarding address to send the bills to, but never did. The landlord tried to reach them and was met with a threat of police involvement if the landlord called or texted. The landlord referred the tenants to the *Residential Tenancy Act*, but they refused to agree with what the landlord was trying to tell them. Prior to that, the landlord tried to discuss it with the tenants but was met with accusations of lying and character slander. The landlord also told the tenants that it was going to be difficult to re-rent the unit for December 1, 2014.

The landlords advertised the rental unit on 3 different on-line advertising websites after the tenants gave notice to vacate. However, it is difficult to rent on December 1 or near the holiday season, and the rental unit was re-rented for February 1, 2015. A copy of that new tenancy agreement has also been provided as evidence which is signed by a new tenant and the landlords on January 1, 2015 for a tenancy to commence on February 1, 2015 for the same amount of rent.

The landlord's sibling is also a co-owner and resides in the rental building. All utilities are in the sibling's name. The tenants didn't have to pay an internet hook-up fee if the tenants would pay half of the internet bill to the sibling. The tenants paid one payment of \$25.00 and no more, so in mid-November, 2014 the internet was discontinued to the rental unit.

Based on the square footage of the house, utilities were 1/3 for the rental unit, which is heated with natural gas. The tenants did not pay the utility bills, and the landlords claim \$282.63 to November 30, 2014.

After the tenants moved out, they contacted the City reporting that the rental unit was illegal. An inspector arrived and told the landlords what to do to make it a legal suite, such as changing the ceiling and the landlords had to get a permit. The permit was obtained in December or January, and the landlords attempted to get one as soon as they learned it was required, but it couldn't be obtained during the holiday season.

The second landlord testified that the parties agreed that the tenants would pay half of the internet bill and one third of the water, gas and electric bills. Copies of bills have been provided, for which the landlords claim:

- \$30.91 for the natural gas bill which appears to be dated October 24, 2014, and the landlords' Monetary Order Worksheet specifies that amount for September 14 to October 24, 2014;
- \$52.66 for the electric bill covering the period of August 12 to October 20, 2014;
- \$31.92 for the water bill covering the period of October 21 to December 31, 2014;
- \$15.59 for the gas bill covering the period of November 24 to December 19, 2014;
- \$55.30 for the electricity bill covering the period of October 20 to December 18, 2014;
- \$25.00 for the internet service for October 13 to November 12, 2014;
- \$12.50 for the internet service for November 13 to December 12, 2014; and
- \$58.75 for the gas bill covering the period of October 24 to November 24, 2014.

All amounts claimed are pro-rated from the actual billing amounts to one half of the internet and one third of the other utilities to the end of the tenancy. Also included are a gas bill dated September 21, 2014 showing the tenants' portion of \$41.42 and an internet bill for internet service for September 13 to October 12, 2014 showing \$23.88 for the tenants' portion, and both are marked paid by the tenants.

The tenant testified that they were told that the rental unit was a legal suite, and feels that the lease was presented under false pretenses. There were some issues with respect to heat and noise, so the tenant inquired with the City in mid-October or so and the tenant learned that it wasn't a legal suite.

The tenant further testified that heat was controlled from an upper unit and as weather started to turn cold, the rental unit was very cold. Separate heaters, one being a fireplace, were provided by the landlords but they were noisy and not doing the job. The tenant told the landlord and his solution was more heaters, but nothing he provided worked. The tenant, spouse and teenager reside in the 2 bedroom unit and the landlords provided 3 space heaters.

With respect to the noise, the tenants were informed that 3 young boys resided in the upper unit but that the insulation was good, however it wasn't. That was also noticed by the by-law officer. The tenant tried to tell the occupants in the upper unit, however the tenant's partner has a home-based business and business was affected by it so the work dropped drastically. The landlord had suggested blocking the heat ducts, which they did, but could still hear conversations from the upper unit.

On December 17, 2014 the landlords obtained the permit and the final date of compliance was February 25, 2015. The tenant got that information from the City yesterday, but no written confirmation has been provided.

Over time, the tenants expressed their displeasure and in early October the landlord verbally agreed that it would be best if the tenants moved out due to life-style differences with the tenants and the landlord's sibling. The tenant stated that the landlords duped the tenants into renting the suite, lied about the condition of the rental unit, the poor insulation, cold, and the landlord was a bully.

The tenants did not trust the landlords to send the security deposit back so they withheld half of November's rent, and is not comfortable with giving the landlords a forwarding address. The landlord served the tenant at work.

The tenant refused to provide an address to send a copy of this Decision to in the presence of the landlords during the hearing. The tenant was advised that it would not be appropriate for any discussion to take place in the absence of the landlords, and the Decision will be sent to the address contained on the landlords' application.

Analysis

Firstly, with respect to the landlords' application regarding service, the tenant testified that the landlords' application and the hearing package was served to the tenant at his place of employment, and did not raise any objections to that method, stating that he did not want to give the landlords a forwarding address. I refer to Residential Tenancy Branch Policy Guideline 12 which outlines such applications stating that the Legislation provides that the Residential Tenancy Branch may make an order that a notice, order, process or other document may be served by substituted service in accordance with the order and that a document has been sufficiently served for the purposes of the Legislation on a specified date, and that a document not served in accordance with the service sections of the Legislation has been sufficiently given or served for the purposes of the Legislation. The landlords need only satisfy me that the tenants could not be served by any of the methods permitted under the Legislation and that the party being served would receive the documents. In this case, I am satisfied of both, and I find that the landlords' application, hearing package and evidence were personally served on one tenant for both tenants at the place of employment of one of the tenants, and I find that the tenants have been sufficiently served on February 18, 2015.

The *Residential Tenancy Act* states that a tenant may not apply a security deposit to rent unless the landlord gives written consent. In this case, the landlord testified that the tenant demanded it and only paid half the rent for the last month of the tenancy, and the tenant admitted that saying that he didn't trust the landlords to return it. I accept that because the tenants breached the fixed term of the tenancy agreement and they feared they wouldn't get it back for that reason and have thereby attempted to thwart any

attempt by the landlords to recover the utilities or other amounts that the landlords may be entitled to even after promising to provide an address to send the bills to.

The *Act* also states that a landlord has 15 days from the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, whichever is later, to return the security deposit or make a claim against it within that 15 days. If the landlord doesn't receive the forwarding address within a year, the landlord may keep the security deposit. I find that the landlords hold the security deposit in trust in the amount of \$625.00, and the tenants owe the landlords \$625.00 for unpaid rent for the month of November, 2014, and the tenants are obligated by law to provide a forwarding address in writing if they wish to have the security deposit returned. If they fail to do so within a year of the end of the tenancy, the landlords may keep the security deposit.

The *Act* also requires a party who makes a monetary claim against another party to do whatever is reasonable to mitigate, or reduce the loss suffered. In this case, respecting loss of revenue for the landlords for rent for the months of December, 2014 and January, 2015, the landlord testified that they advertised the rental unit for rent upon receiving the tenants' notice to end the tenancy, and that it's difficult to rent for December 1, 2014 and told the tenants that. The tenant's defence is that the rental unit was not as promised and therefore the tenants were justified in ending the tenancy prior to the fixed term, but there is no evidence of that. The tenant stated that he learned in mid-October or so that it wasn't a legal suite, but there is no evidence of that. The tenant also testified that he learned the day before the hearing that the landlord couldn't have rented it without a permit which wasn't received until December 17, 2014 and the final date of compliance was February 25, 2015. However, there is no evidence of that either, and the landlords re-rented the rental unit on February 1, 2015. Therefore, I accept the testimony of the second landlord that the permit was not preventing the landlords from re-renting. The tenant also complained of heat and noise issues, however the appropriate method of dealing with that was to make an application for dispute resolution to obtain an order that the landlords comply with the *Act* and the tenancy agreement. The tenant also testified that the home-based business was affected by it so the work dropped drastically, but there is no evidence of that. The parties entered into a contract and are bound by the terms of it, including the fixed term of the tenancy. The landlords have provided proof of obtaining a new tenancy one month after this tenancy ended for a new tenancy to begin a month after that, and during the holiday season, I find that to be reasonable, and I find that the landlords have established a monetary claim for loss of revenue in the amount of \$2,500.00.

With respect to unpaid utilities, I have reviewed the bills provided by the landlords and the tenancy agreement, and it's clear that none of the utilities are included in the rent.

The bills are pro-rated to the last day of the tenancy amounting to half of the internet and one third of the other utilities, and the tenant did not object to the landlords' testimony that they had agreed to those amounts. I find that the tenants are liable for utilities in accordance with the agreement during the tenancy and the landlords are owed \$282.63.

In summary, I find that the landlords are owed \$625.00 for unpaid rent for the last month of the tenancy, \$2,500.00 for loss of revenue, \$282.63 for utilities, and recovery of the \$50.00 filing fee for a total of \$3,457.63.

The landlords have not applied for an order permitting them to keep the \$625.00 security deposit and the tenants have not provided a forwarding address in writing to the landlords. I decline to set it off from the amount owed to the landlords. A tenant is not permitted by law to demand that it be applied to the last month's rent of a tenancy, and I leave it to the parties to deal with the security deposit in accordance with Section 38 of the *Residential Tenancy Act*.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the landlords as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$3,457.63.

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: May 22, 2015

Residential Tenancy Branch

