



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD

Introduction

This hearing dealt with a landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

The landlord served both hearing packages upon the male tenant, in person. The female tenant was present at the hearing and she confirmed that she was provided a copy of the hearing package by her husband, the male tenant, and that she was aware of the remedies sought by the landlord by way of this proceeding. As such, I deemed the female tenant sufficiently served with the landlord's Application for Dispute Resolution pursuant to the authority afforded me under section 71 of the Act.

I heard the landlord left his evidence package for the tenants in a file folder on a table in a common area where the parties routinely leave documents for each other in the few days before this proceeding. The tenant stated that he was uncertain that the file folder contained evidence for this proceeding and did not take the file folder. The landlord stated that all of the documents included in the file folder had been given to the tenants on previous occasions, with the exception of a document dated December 26, 2014 which was a summary of a verbal discussion. I asked the tenants to retrieve the file folder during the hearing and review the documents. The tenant confirmed that he had seen many of the documents previously. Therefore, I accepted the landlord's documents into evidence.

The landlord confirmed receipt of the tenant's written submissions and evidence. According, I accepted and considered those documents.

I heard that the parties have been long-time friends and this proceeding was difficult for the parties. Early in the proceeding, I attempted to facilitate a mutual agreement as both parties were agreeable to exploring that option. Unfortunately, an agreement with specific and enforceable terms was not obtainable during the hearing and I proceeded to consider whether the landlord is entitled to the orders he requested.

During the hearing, the landlord requested the Application be amended to include retention of the security deposit in partial satisfaction of the unpaid rent. I found the request non-prejudicial to the tenants as it would reduce the amount of rent owed by the tenants and I permitted the amendment.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to monetary compensation for unpaid rent and utilities?
3. Is the landlord authorized to retain the tenants' security deposit?

Background and Evidence

The tenancy commenced 10 or 11 years ago under a verbal agreement and the landlord collected a \$500.00 security deposit.

The parties agreed that the tenants were required to pay rent of \$500.00 every second week. Originally rent was payable every second Friday and then it changed to every second Saturday to coincide with the tenants' pay days. The tenants were also required to pay the landlord for hydro on the third week of every month, as determined under an equal-payment plan, and any overage or underage would be reconciled at the end of the year. Currently, the hydro payment is \$300.00 per month.

The landlord served the tenants with two Notices to End Tenancy on March 28, 2015: a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) and a 1 Month Notice to End Tenancy for Cause (the 1 Month Notice). The landlord also gave the tenants a Mutual Agreement to End Tenancy but a mutually agreeable end date was not reached and the tenants did not sign the Mutual Agreement.

The 10 Day Notice indicates rent of \$3,000.00 was outstanding as of March 14, 2015 and the 10 Day Notice has a stated effective date of "April 31, 2015". The 1 Month Notice also has a stated effective date of "April 31, 2015".

The tenants acknowledged receipt of both Notices to End Tenancy and they did not file to dispute either Notice. Nor, did the tenants did not pay the outstanding rent within five days of receiving the 10 Day Notice. Rather, the tenant stated that after receiving the Notices they had discussions about the fate of this tenancy. On April 1, 2015 the landlord presented three options to the tenants as to continue the tenancy or ending it; however, the tenants were not agreeable to any of the options presented.

The landlord provided pages of a hand-written ledger he prepared showing amounts he charged for rent and hydro and then payments received from the tenants. During the tenancy the landlord's son and his girlfriend occupied part of the rental unit for which the landlord credited the tenants' ledger \$400.00 and then \$450.00 for each person, every month. Both parties agreed that the monthly credit for the landlord's son and girlfriend was to include one meal per day.

The landlord's ledger reflects a balance owing of \$3,425.00 as of March 14, 2015 rather than the \$3,000.00 reflected on the 10 Day Notice. In filing for this Application on May 6, 2015 the landlord indicated he was owed \$3,835.00 at that time, which is the amount reflected in the ledger. The ledger continues until May 23, 2015 where the balance reads \$4,685.00 after applying a credit for the landlord's son's room and board.

The tenant did not deny that rent and hydro is owed to the landlord but explained that he and his wife have suffered financial difficulties largely due to medical expenses; but also because the hydro obligation increased from \$210.00 to \$300.00 per month recently which made things more difficult; and, that when the landlord's son and girlfriend lived with them they spent more than anticipated on food. The tenant stated that the landlord's son moved out last month and his girlfriend moved out a couple of months ago. Finally, the tenant noted that when there were three pay days in a month he was charged for three rent payments. The tenant confirmed that rent was payable bi-weekly. The difference between semi-monthly and bi-weekly payments were discussed after which the tenant stated he understood the difference.

In response, the landlord stated that when the hydro equal payment plan was at \$210.00 per month there was a large payment required to reconcile the account at the end of the year. The landlord also pointed out that he gave credit to the tenants for his son's room and board for the month of May 2015 in calculating the balance of \$4,685.00 even though his son no longer resides in the rental unit.

The tenants had also indicated that the landlord's ledger contained errors. The landlord acknowledged errors had been made at times in the past but that the ledger was

reviewed and corrected. I noted that in the landlord's ledger entries were made indicating they were to correct an error.

Both parties provided consistent testimony that at times the tenant had done work on the property for which the landlord has compensated him.

In the tenants' written submission they state the landlord did not issue receipts for cash payments; however, they do acknowledge receiving copies of the ledger that reflects payments. The tenants also submitted two pages of the ledger that appear to have the same time period with different amounts recorded. The landlord responded by stating the two different ledger pages are for different years. I noted that on one ledger page the hydro obligation is recorded as being \$210.00 and on the other ledger page the hydro obligation is recorded as being \$300.00 per month which would support the landlord's position that the ledgers are for different years.

The tenants also indicated in their written submission that their obligation to pay hydro is unfair giving there are other tenants living in the upper unit of the house and in the pool house. The tenants did not provide any specific information such as the number of other occupants or the relevant dates.

The landlord requested an Order of Possession effective 14 days after service upon the tenants.

Analysis

Although the landlord issued two different types of Notices to End Tenancy, the landlord only requested an Order of Possession based upon the 10 Day Notice. As such, I have only considered whether the tenancy has ended pursuant to the 10 Day Notice.

Under the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement. Where a tenant does not pay rent when due the landlord is at liberty to issue a 10 Day Notice to End Tenancy for Unpaid Rent. When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice.

I accept the undisputed evidence before me that the landlord served the tenants with a 10 Day Notice to End Tenancy on March 28, 2015. I note that the landlord provided an effective date of April 31, 2015 on the Notice which is longer than the notice period required under the Act. However, since there are not 31 days in April I have amended the Notice to read the last day in April which is April 30, 2015. I also noted that the landlord misspelled the tenants' last name on the 10 Day Notice. I am satisfied the tenants knew or ought to have known this was a spelling error and I amended the Notice to reflect the correct spelling of their last name.

Since the tenants did not pay the outstanding rent or file to dispute the 10 Day Notice within five days of receiving it I find the tenancy ended pursuant to that Notice, on April 30, 2015.

Having found the tenancy ended April 30, 2015 I find the landlord is entitled to regain possession of the rental unit. Therefore, I grant the landlord's request for an Order of Possession effective 14 days after service upon the tenants.

With respect to the amount of unpaid rent and utilities, I accept the landlord's ledger as the best evidence as to the amount owed by the tenants in the absence of any other figures presented by the tenants. Since the tenants have remained in possession of the rental unit I find the landlord has established a loss of \$4,685.00 as of the date of the hearing.

It should be noted that where a tenant pays for utilities used by other tenants, such a term may be seen as unconscionable and unenforceable. In this case, the tenants did not provide sufficient particulars for me to determine whether an adjustment to the tenants' share of hydro is warranted. Nor, did they file their own Application seeking compensation for overpayment of utilities. Therefore, I award the landlord compensation of \$4,685.00 based upon the landlord's ledger and if the tenants are of the position that their hydro obligation is unconscionable they are at liberty to seek resolution with the landlord or by filing their own Application for Dispute Resolution, as appropriate.

I authorize the landlord to retain the tenants' security deposit and interest in partial satisfaction of the rent and utilities owed to the landlord. I have estimated the accrued interest assuming the tenancy started 11 years ago which amounts to \$17.69.

As the landlord did not seek recovery of the filing fee and I make no award for such.

In light of all of the above, I provide the landlord with a Monetary Order to serve and enforce, calculated as follows:

Rent and utilities: per landlord's ledger	\$ 4,685.00
Less: security deposit and interest	<u>(517.69)</u>
Monetary Order	\$ 4,167.31

Conclusion

The landlord has been provided an Order of Possession effective 14 days after service upon the tenants, as requested. The landlord has been authorized to retain the tenants' security deposit and interest in partial satisfaction of the rent owed to the landlord. The landlord has been provided a Monetary Order for the balance of \$4,167.31 to serve and enforce as necessary.

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 29, 2015

Residential Tenancy Branch

