



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNR, MNDC, O, FF

Introduction

This hearing dealt with an application by the tenants for an order setting aside a notice to end this tenancy and a monetary order and a cross-application by the landlord for a monetary order. The landlord participated in the conference call hearing whereas the tenants did not.

Issues to be Decided

Were the tenants properly served with the landlord's application for dispute resolution, notice of hearing and evidence?

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The landlord's undisputed evidence is as follows. The landlord received the tenants' application for dispute resolution and notice of hearing on May 1, 2015. The landlord filed an application for dispute resolution which was set to be heard at the same time as the tenants' application and sent documents to the tenants via registered letter on May 8. The landlord sent the documents to the address for service listed on the tenants' application for dispute resolution, which was the address of the rental unit. The landlord testified that although the tenants had vacated the rental unit at some point after they filed their own application for dispute resolution, the tenants did not provide a forwarding address, nor did they give the landlord a new address for service. The landlord testified Canada Post records show that the letters were redirected to a new address and that the female tenant signed for her registered letter on May 16. The male tenant's letter was also redirected to a new address but the records show that it was refused. The letter was returned to the landlord. The landlord also sent evidence to the tenants at their address for service.

The parties were in a previous hearing held on April 21, 2015. The parties arrived at a settlement agreement at that hearing and the decision reflects the following:

- a. The parties agree that the tenants owe the landlord the sum of \$1416.78 in outstanding water bills to March 1, 2015.

- b. The tenant shall pay to the landlord's agent the sum of \$1416.78 on or before April 24, 2015.

The landlord testified that the tenants did not pay the amount reflected in the decision.

The landlord testified that the \$1,416.78 which the tenants agreed to pay did not include a \$216.31 invoice for water for the period from October 1, 2014 – December 31, 2014 with a billing date of January 29, 2015. The landlord testified that he provided that invoice at the previous hearing but apparently it was not considered in the total reflected in the settlement agreement. The landlord now seeks to recover that sum from the tenants.

The landlord further testified that he received another water bill for \$592.02 after the April 21 hearing for the billing period from January 1 – March 31, 2015 and seeks to recover that sum from the tenants.

The landlord also seeks to recover the \$50.00 filing fee paid to bring his application.

The tenants' claim is for \$331.80 in compensation for what they characterized as emergency repairs.

Analysis

The tenants did not appear at the hearing to present their claim and the landlord appeared and was ready to respond to that claim. As the tenants did not advance their claim, it is dismissed without leave to reapply.

The tenants provided an address for service when they filed their claim on April 29 and they did not advise the landlord of any change in that address. Further, the landlord believes that the tenants had not yet vacated the rental unit on the date the registered letters containing notice of the landlord's claim were sent to the tenants. The female tenant received the documents and the male tenant refused the documents. I find that both of the tenants were properly served with the landlord's claim, notice of hearing as the male tenant cannot avoid service by refusing registered mail.

I find that at the April 21 hearing, the tenants agreed that they owed the landlord \$1,416.78 and promised to pay him that amount. I therefore find that the landlord is entitled to recover \$1,416.78 and I award him that sum.

I find that at the time of the April 21 hearing, the landlord had in his hands the bill for \$216.31 but for some reason, he chose to enter into a settlement agreement which did not include that bill. The agreement very clearly states that the agreement encompassed "outstanding water bills to March 1, 2015" and I find that because the landlord had that bill at the time of the April 21 hearing and it was an outstanding bill on that date, the settlement agreement estops the landlord from claiming recovery of that bill. I therefore dismiss the claim for \$216.31.

Because the billing date for the \$592.02 bill was April 29, 8 days after the April 21 hearing, I find that this bill cannot be characterized as outstanding because it had not yet been rendered by the city. The April 21 decision shows that the tenants were obligated to pay the “metered water and utility bill” and I find that as these city bills were the same type of invoices which the tenants agreed to pay in the April 21 decision, this invoice is captured by the obligation to pay for metered water and utilities. I find that the tenants are liable for this bill and I award the landlord \$592.02.

As the landlord has been substantially successful in his claim, I find he should recover the \$50.00 filing fee paid to bring the claim and I award him \$50.00.

As the landlord did not file a claim to retain the security deposit and provided no evidence as to the amount of the deposit or whether there was an agreement between the parties respecting the deposit, I have not applied the deposit to the award. The landlord should deal with the deposit in accordance with the provisions of the Act.

I grant the landlord a monetary order under section 67 for \$2,058.80. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The tenants’ claim is dismissed without leave to reapply. The landlord is granted a monetary order for \$2,058.80.

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: June 10, 2015

Residential Tenancy Branch

