



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 was convened by way of conference call concerning an application made by the landlord for an Order of Possession and a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the tenants for the cost of the application.

The landlord attended the hearing and provided evidentiary material in advance of the hearing, but did not testify. The landlord was represented at the hearing by an agent who gave affirmed testimony. One of the tenants also attended and gave affirmed testimony and represented the other named tenant. The parties 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. No issues with respect to service or delivery of evidence were raised.

During the course of the hearing, the parties advised that a previous hearing had been scheduled for May 14, 2015. The landlord's agent attended that hearing, but no evidence had been provided and the landlord's application was dismissed with leave to reapply. This is the landlord's re-application.

Issue(s) to be Decided

- Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent?
- Has the landlord established a monetary claim as against the tenants for unpaid rent?
- Has the landlord established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for the cost of propane?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on December 1, 2014 and the tenants still reside in the rental unit. Rent in the amount of \$700.00 per month is payable in advance on the 1st day of each month, although no written tenancy agreement exists. No security deposit or pet damage deposit were collected by the landlord at any time during the tenancy.

The landlord's agent further testified that the tenants fell into arrears of rent and on June 2, 2015 the landlords served the tenants by Express Post a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. A copy of both pages of the notice has been provided and it is dated June 2, 2015 and contains an effective date of vacancy of June 17, 2015 for \$1,900.00 of unpaid rent that was due on June 1, 2015 and \$1,845.48 for utilities following a written demand on January 19, 2015. The landlord has provided a copy of a Canada Post cash register receipt dated June 2, 2015 and a copy of a tracking print-out showing Xpresspost with an expected delivery of June 4, 2015. The printout shows that on August 4, 2015 the mail was available for pickup at the Post Office, an attempted delivery, and a notice card left indicating where it can be picked up. Then a final notice on August 9, 2015 and that the item will be returned to the sender if not collected within 10 days.

The landlord's agent further testified that today the landlord is owed \$1,845.48 for propane and \$3,300.00 for rent, totalling \$5,145.48, and has provided copies of propane invoices to corroborate the amount. Also provided are copies of Business Deposit slips showing payments from the tenants deposited on February 18, 2015 in the amount of \$700.00 for January's rent, another \$700.00 on February 18, 2015 for February's rent, and \$900.00 deposited on May 20, 2015 being \$700.00 for March and \$200.00 for April. Also provided is a copy of a handwritten note dated May 19, 2015 from the landlord to the tenants demanding payment for propane at \$1,845.48 and outstanding rent of \$500.00 for April; \$700 for May and \$700.00 for June.

The landlord has not been served with an application for dispute resolution by the tenants disputing the notice, and the landlord seeks an Order of Possession and a monetary order for \$5,195.48, including recovery of the \$50.00 filing fee.

The tenant testified that the rental unit is a manufactured home owned by the landlord, and the original agreement between the parties was for the tenant to renovate it, with utilities included, and the tenant would pay as much rent as he could over the summer. However, when the tenant attended, the home needed too much work and would not have been cost effective to do that. Supplies would cost too much so the tenant hasn't done any work to it. The tenant asked the landlord for a lease setting out the amount of rent payable. There was no such agreement as to the amount of rent.

The tenant denies receiving the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities in June and stated that there was no card left in the tenants' mail to notify them of any registered mail. The landlord conducted a home inspection on June 20, 2015 and served the Landlord's

Application for Dispute Resolution and hearing package at that time. The tenant also spoke to the landlord about it and the landlord wanted the tenant to pay the trailer park manager, not the landlord.

The tenant gave the landlord \$900.00 in May, 2015 to cover expenses for April and part of May, 2015 and requested a lease with utilities included, but the landlord refused.

At the conclusion of the hearing, the parties were asked to confirm their mailing addresses, and the tenant provided a Post Office box number, not the address of the tenants contained in the Landlord's Application for Dispute Resolution or the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities or the address of the rental unit. All of the latter documents show the tenants' address as the physical address of the rental unit.

Analysis

Firstly, with respect to the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the *Act* requires a landlord to serve it upon the tenant. The tenant denies receiving it and the landlord has provided evidence of sending it by a signature required method through Canada Post on June 2, 2015. I also consider the tracking document for the mail, and it states that a notice card was left indicating where the item can be picked up. If the tenants do not get mail at the address of the rental unit, then who does? It is clear that a card was left for that unit. The *Residential Tenancy Act* specifies that documents served in that manner are deemed to have been served 5 days later, and I find that the tenants have been served with the notice in accordance with the *Residential Tenancy Act* effective June 7, 2015.

The *Act* also states that once a tenant is served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenant has 5 days to dispute the notice or pay the rent. If the tenant does neither, the tenant is conclusively presumed to have accepted the end of the tenancy. In this case, I have reviewed the notice and I find that it is in the approved form and requires information required by the Act. Having found that the tenants were served with the notice on June 7, 2015, and considering the testimony of the landlord's agent that the landlord has not been served with an application for dispute resolution disputing the notice, and I have no such application before me, I find that the tenants are conclusively presumed to have accepted the end of the tenancy and the landlord is entitled to an Order of Possession. Since the effective date of the notice has long since passed, I grant the order on 2 days notice to the tenants.

With respect to the landlord's application for a monetary order, I am satisfied by the evidence that the parties agreed to \$700.00 per month for rent. The parties agree that the tenants paid \$900.00 in May for April and part of May, 2015. The landlord has provided evidence of \$700.00 per month for January and February. The amount of rent claimed in the landlord's demand letter of May 19, 2015 is consistent with the amount claimed in the notice to end the tenancy,

and I find that the landlord has established a monetary claim for \$3,300.00 for the months of April through August, 2015 inclusive.

Where a party makes a claim against another party, the onus is on the claiming party to prove the claim. The tenant denies owing anything for propane and testified that utilities were included in the rent. Absent a written tenancy agreement, where it boils down to one person's word over another, the claim has not been proven and I deny the landlord's claim for unpaid propane.

Since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenants.

I further grant a monetary order in favour of the landlord as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$3,350.00.

These orders are 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: August 13, 2015

Residential Tenancy Branch

