



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPC, MNR, CNC, OLC, O

Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Cause and for “other”.

The Landlord stated that sometime in August of 2015 the Application for Dispute Resolution and the Notice of Hearing were personally served to the Tenant with the initials “S.S.” by the Landlord’s mother. The Tenant denied receipt of these documents.

The Landlord stated that on September 18, 2015 he personally served the Tenant with the initials “S.S.” with the Application for Dispute Resolution and the Notice of Hearing. The Tenant acknowledged receipt of these documents.

The Tenant stated that he showed the Landlord’s Application for Dispute Resolution and the Notice of Hearing to his co-respondent as soon as he received them, and that he is representing the co-respondent at these proceedings. In the absence of evidence to the contrary I find that the Tenant with the initials “D.R.” has been served with these documents in accordance with section 89 of the *Residential Tenancy Act (Act)*. The hearing proceeded in the absence of the co-respondent.

The Tenants filed an Application for Dispute Resolution, in which the Tenants applied to set aside a Notice to End Tenancy for Cause and for an Order requiring the Landlord to comply with the *Act* or the tenancy agreement.

The Tenant stated that on September 01, 2015 he personally served the Landlord’s son with the Application for Dispute Resolution and the Notice of Hearing. The Landlord stated that these documents were personally served to him by the Tenant with the initials “S.S.”.

The Tenant stated that when he served the Application for Dispute Resolution and the Notice of Hearing to the Landlord he also served the Landlord with a copy of the Notice

to End Tenancy and a rent/hydro receipt from August of 2015. The Landlord stated that he did not receive those documents from the Tenant but he does not dispute their existence. The parties agreed on the content of those documents when they were discussed at the hearing and the content of the documents were considered during this adjudication.

On September 16, 2015 the Landlord submitted 14 pages of evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was personally served to the Tenant with the initials "D.R." on September 16, 2015. The Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On October 13, 2015 the Landlord submitted 15 pages of evidence to the Residential Tenancy Branch, including an amended Application for Dispute Resolution. The Landlord stated that this evidence was personally served to the Tenant with the initials "S.S." on October 13, 2015. The Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

The Tenant stated that he understood the Landlord had amended the Application for Dispute Resolution to include a claim for unpaid rent and utilities, and that he was prepared to respond to these claims at these proceedings.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Should the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, be set aside or is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to compensation for unpaid rent or utilities?Background and

Evidence

The Landlord and the Tenant agree that:

- this tenancy began on July 01, 2015;
- the Tenants agreed to pay rent of \$800.00 by the first day of each month;
- the Tenants paid rent, in cash, for August of 2015;
- the Tenants received a receipt for the rent payment for August of 2015;
- the Tenants paid rent, by bank draft or money order, for July of 2015;
- the Tenants did not receive a receipt for the rent payment for July of 2015;
- on August 06, 2015 the Tenant with the initials "S.S." was personally served with a One Month Notice to End Tenancy for Cause;
- the copy of the One Month Notice to End Tenancy for Cause that was served to

- the Tenants was signed by the Landlord;
- the One Month Notice to End Tenancy for Cause declared that the Tenant must vacate the rental unit by September 06, 2015; and
- the Tenants did not pay rent for September of 2015.

The copy of the One Month Notice to End Tenancy that was submitted in evidence by the Landlord was accepted as evidence for these proceedings. This Notice indicates the Landlord wishes to end the tenancy because:

- the Tenants have allowed an unreasonable number of occupants in the unit;
- the Tenants or a person permitted on the property by the Tenants have significantly interfered with or unreasonably disturbed another occupant or the landlord;
- the Tenants or a person permitted on the property by the Tenants have seriously jeopardized the health or safety or lawful right of another occupant or the Landlord;
- the Tenants or a person permitted on the property by the Tenants have put the Landlord's property at significant risk;
- the Tenants have engaged in illegal activity that has, or is likely to, damage the Landlord's property.
- the Tenants have engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety or well-being of another occupant;
- the Tenants have engaged in illegal activity that has, or is likely to, jeopardize a lawful right or interest of another occupant or the Landlord;
- the Tenants have caused extraordinary damage to the property;
- the Tenants have assigned or sublet the rental unit without written consent;
- the Tenants knowingly gave false information to a prospective tenant or purchaser of the property; and
- the security deposit was not paid within 30 days as required by the tenancy agreement.

After considerable discussion about the merits of the One Month Notice to End Tenancy, the parties were advised that I will determine whether the Notice should be upheld or set aside after the conclusion of the hearing. Without being advised of my determination, the parties mutually agreed to end this tenancy on November 30, 2015, with the understanding rent would be paid when it is due on November 01, 2015.

The Landlord is seeking compensation for unpaid rent from September and October of 2015, in the amount of \$1,600.00.

The Tenant stated that he paid his rent for October, in cash, on October 01, 2015 but he did not receive a receipt. The Landlord stated that rent was not paid for October of 2015, which is why the Tenants were not given a receipt.

The Landlord is seeking compensation for unpaid hydro, in the amount of \$141.59.

The Landlord and the Tenant agree that the Tenants are required to pay for hydro consumption during their tenancy.

The Landlord submitted a copy of a letter from a hydro company, dated September 16, 2015. This letter declares that there are arrears of \$141.59 and that the arrears should be paid "today" to avoid disconnection. The letter does not establish when these charges were incurred.

The Tenant stated that they paid \$200.00 for hydro in August of 2015, although he was not provided a copy of any hydro bills.

The Landlord agreed that the Tenants paid \$200.00 for hydro in August, which he contends was applied to a previous bill of \$193.00. He stated that he does not have the previous bill with him so he is unable to determine the billing periods of the previous bill or the current bill for which he is seeking compensation. He stated that a second bill, which he believes was for \$141.59, was received after the bill for \$193.00. He does not have this second bill with him, so he is unable to determine the billing period of that bill.

The Landlord is seeking compensation for unpaid utilities, in the amount of \$173.28.

The Landlord and the Tenant agree that the tenancy agreement requires the Tenants to pay for water consumption during their tenancy and that the Tenants have not paid any portion of water charges incurred during the tenancy.

The Landlord submitted a copy of a utility bill, in the amount of \$173.28. The bill does not indicate a billing period, although it declares that the bill, which is dated July 31, 2015, is for 98 days. The bill includes \$105.13 for water charges and \$68.15 for sewer charges.

The Tenant stated that he believes he is only obligated to pay a pro-rated portion of the water charges on the utility bill, which he received as evidence for these proceedings.

Analysis

As the parties mutually agreed to end this tenancy on November 30, 2015, I find I do not need to consider the merits of the One Month Notice to End Tenancy that is the subject to this dispute.

On the basis of the mutual agreement to end the tenancy on November 30, 2015, I find that the Landlord is entitled to an Order of Possession that is effective on November 30, 2015.

On the basis of the Tenant's testimony that he understands the mutual agreement to end the tenancy is contingent on paying rent for November of 2015, I will include rent for November in the monetary Order that is being awarded to the Landlord.

Section 26 of the *Act* requires tenants to pay rent when it is due. On the basis of the undisputed evidence, I find that the Tenants did not pay the rent that was due on September 01, 2015. I therefore find that the Tenants owe \$800.00 in rent for September of 2015.

Section 26(2) of the *Act* stipulates that a landlord must provide a receipt when rent is paid by cash. On the basis of the undisputed evidence, I find that the Landlord provided the Tenants with a receipt when the rent for August of 2015 was paid in cash.

Cash receipts help to establish when a rent payment has not been made and, to a lesser degree, when rent has not been paid. When a landlord regularly provides receipt for cash payments there is an expectation that a tenant will produce a receipt for every cash payment that has allegedly been made. When a tenant is unable to provide a receipt for an alleged payment, it lends credibility to a landlord's claim that a cash payment has not been made.

When a tenant has previously made cash payments and has never been provided with a receipt, there is no expectation that the tenant will provide a receipt for a cash payment that has been made. In these circumstances the Landlord has provided a cash receipt on the one occasion the Landlord acknowledges receiving rent in cash. I therefore find it reasonable to conclude that the Landlord would have provided a receipt if he had received rent, in cash, for October of 2015.

I favour the evidence of the Landlord over the evidence of the Tenant in regards to the rent payment, in large part, because the Landlord has demonstrated compliance with the requirement to provide a receipt when rent is paid in cash. I therefore find that the Tenants owe \$800.00 in rent for October of 2015.

On the basis of the undisputed evidence, I find that the Tenants are responsible for paying for hydro used during this tenancy and that the Tenants have paid \$200.00 in hydro since this tenancy began. I find that the Landlord has submitted insufficient evidence to establish the hydro charges that have been incurred between July 01, 2015 and September 16, 2015.

In adjudicating the claim for hydro costs I was heavily influenced by the absence of any of the actual hydro bills for the period between July 01, 2015 and September 16, 2015. In the absence of the actual bills I am unable to corroborate the Landlord's claim that he has received a bill for \$193.00 and a bill for \$141.59 during this tenancy.

In the absence of the actual hydro bills, I am unable to determine whether the \$200.00 payment has fully satisfied the hydro charges incurred during this tenancy or whether it has only partially satisfied the charges.

For me to conclude that on September 16, 2015 the Tenants owed \$141.59 for hydro in addition to the \$200.00 they paid in August of 2015, I would have to conclude that they

incurred hydro charges of \$341.59 for the period between July 01, 2015 and September 16, 2015, which is approximately \$136.00 per month. This seems unusually high for summer months and, in the absence of the actual bills to support the Landlord's claim, I dismiss the claim for unpaid hydro.

I find it reasonable to conclude that the billing period for the charges of \$341.59 actually ends prior to September 16, 2015, as the letter declaring \$141.59 is overdue is dated September 16, 2015. This implies that the overdue payment was due sometime prior to September 16, 2015, although I have insufficient evidence to determine when that amount was actually due. Assuming the payment was due prior to September 16, 2015, the monthly hydro costs I estimated would be higher than the amount estimated.

In adjudicating the claim for hydro I found the letter from the hydro company, dated September 16, 2015, to have limited probative value. This letter simply declares that a debt of \$141.59 has accrued. I find it entirely possible that the \$141.59 debt relates to the billing period for which the Tenant has already paid \$200.00, and the Landlord has simply neglected to pay the bill that is due.

On the basis of the tenancy agreement submitted in evidence, I find that the Tenants are not required to pay for sewage disposal during the tenancy. I therefore dismiss the Landlord's application to recover the portion of the \$68.15 of the utility bill that relates to sewer charges.

On the basis of the undisputed evidence, I find that the Tenants are responsible for paying for water used during this tenancy and that the Tenants have not paid for any water consumed during the tenancy.

Given that the utility bill, in the amount of \$173.28, is dated July 31, 2015 and is reportedly for a billing period of 98 days, my best estimate is that the billing period of this bill is between April 25, 2015 and July 31, 2015. The other dates on the bill, which are June 18, 2015 and April 20, 2015, are not helpful in determining the bill period, as it is not clear to me what those dates mean.

On the basis of my estimate that the 98 day billing period of this utility bill is between April 25, 2015 and July 31, 2015 and the fact that this tenancy did not begin until July 01, 2015, I find that the Tenants are only obligated to pay 31/98 of the water charges on this bill. 31/98 of the water charges of \$105.13 is \$33.26, and I find the Tenants must pay this amount.

I find that the Landlord's Application for Dispute Resolution has merit and that the Landlord is entitled to recover the fee for filing this Application.

Conclusion

On the basis of the mutual agreement to end this tenancy on November 30, 2015, I grant the Landlord an Order of Possession, which is effective at 1:00 p.m. on November

30, 2015.

The Landlord has established a monetary claim, in the amount of \$2,483.26, which is comprised of \$800.00 rent for November of 2015; \$800.00 in rent for October of 2015; \$800.00 in rent for September of 2015; \$33.26 in water charges; and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

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: October 28, 2015

Residential Tenancy Branch

