



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant's application: CNR, MT, MNDC

Landlord's application: OPR, MNR, MNDC, FF

Introduction

This hearing dealt with cross applications. The tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and monetary compensation for damage or loss under the Act, regulations or tenancy agreement. The landlord applied for an Order of Possession for unpaid rent or utilities and a Monetary Order for unpaid utilities. 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.

Procedural Matters

Both parties presented a copy of the same 10 Day Notice to End Tenancy for Unpaid Rent or Utilities; however, the parties were in dispute as to when it was served. However, the parties reached a mutual agreement with respect to when this tenancy shall end during the hearing and it was unnecessary for me to determine when the Notice was served. I have recorded the parties' agreement with respect to the end of this tenancy by way of this decision and the Order that accompanies it.

With respect to the tenant's monetary claim, I determined that she did not provide sufficient particulars as to the nature of the claim, proof of the loss she was claiming, or indicate how she calculated the amount she was claiming. As the parties were informed during the hearing, an applicant is required to provide full particulars in filing their application, in keeping with the principles of natural justice, so that the respondent is afforded the opportunity to understand and respond to the claim. Therefore, I did not hear the tenant's monetary claim and it was dismissed with leave.

The landlord sought that I make a decision on the landlord's monetary claims against the tenant for unpaid utilities.

Issue(s) to be Decided

1. When does the tenancy end?
2. Has the landlord established an entitlement to a Monetary Order for the amount claimed for utilities?

Background and Evidence

The tenancy commenced October 18, 2013 and the tenant was required to pay rent of \$900.00 every month. The written tenancy agreement provides that the utilities are not included in rent but that garbage collection is included.

It was undisputed that the landlord sent the tenant a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities by mail on August 20, 2015 indicating the tenant failed to pay \$2,034.50 in utilities that were demanded on July 15, 2015. The landlord submitted that the 10 Day Notice was delivered on August 21, 2015 based on the tracking number; however, a search of the tracking number provided by the landlord indicated that a signature was not required to receive the mail. The tenant stated that she found the 10 Day Notice in the mailbox when she returned home on August 30, 2015; although I noted that in filing her application she indicated she received it on September 1, 2015. Nevertheless, the parties agreed during the hearing that the tenancy shall end on November 30, 2015 by mutual agreement and the landlord shall be provided an Order of Possession effective at 1:00 p.m. on November 30, 2015.

In support of the landlord's monetary claim for unpaid utilities, the landlord's bookkeeper read from a letter mailed to the tenant on July 15, 2015; however, the letter was not included in the evidence package. The tenant stated she did not receive the letter. I noted that the amount payable in the letter and the amount appearing on the 10 Day Notice are the same: \$2,034.50.

The above amount is comprised of \$1,022.33 for unpaid city utilities from 2014 that were transferred to the property tax account due to non-payment; the city utilities for the period of January – March 2015 in the amount of \$206.21; and, \$806.06 the landlord paid to Fortis to re-established natural gas service at the property.

In filing the landlord's monetary claim, the landlord requested recovery of the above amounts plus \$196.21 for city utilities incurred for the months of April through June 2015.

The tenant acknowledged that she did not pay any of the city utilities. The tenant stated she was unaware that she was responsible for paying for the city utilities. The tenant stated that she had initially put the Fortis account in her name and paid the first bill but that she could not afford to pay the Fortis bills after that. The tenant was of the position that the heating costs were excessive since there was lack of insulation in the house. The tenant acknowledged that the landlord did put the Fortis bill in her name after her account went to collections.

Both parties agreed that natural gas is necessary to heat the house with the furnace. The tenant also indicated that natural gas also provides hot water in the house.

Documentary evidence provided by the landlord in support of the amount of utilities claimed by the landlord consisted of: a city utility bill for the period of January – March 2015 and April – June 2015; and, a Fortis bill issued on June 16, 2015 indicating there had been a payment of \$948.74 toward a previous account balance of \$668.74.

I noted that the landlord had not provided a copy of documentation to show the amount of city utilities transferred to the property tax account or the detailed breakdown of those charges. The landlord's bookkeeper indicated that the quarterly statements were going to the rental unit and the landlord was not receiving those statements but that such detail could be obtained from the City upon request. The bookkeeping acknowledged that the detailed breakdown had not yet been requested from the City. The bookkeeper also stated that she did not realize until I was reviewing the tenancy agreement during the hearing that garbage collection was included in rent.

Analysis

Pursuant to section 63 of the Act, I have the authority to assist parties in reaching a settlement agreement during the hearing and to record a settlement agreement in the form of a decision or order.

I have accepted and recorded the mutual agreement reached by the parties to end the tenancy effective November 30, 2015 and I make that an Order binding upon both parties. Accordingly, the landlord is provided an Order of Possession effective at 1:00 p.m. on November 30, 2015 to serve and enforce as necessary.

With respect to the landlord's monetary claim for unpaid utilities, I find the landlord provided insufficient evidence to support the amount claimed. I make this determination considering the landlord did not provide evidence as to the amount transferred to the property tax account or a detailed breakdown of that amount; and, the city utility charges include garbage collection when the tenancy agreement provides that rent includes garbage collection. Further, I find the single Fortis bill is insufficient to show what the "previous balance" of \$668.74 includes or the applicable time period. As I informed the parties during the hearing, I dismiss the landlord's monetary claim against the tenant with leave considering the landlord needs to obtain a detailed breakdown of the city utility bills so as to remove garbage collection from the landlord's claims against the tenant.

I order both parties to share in the cost of the landlord's application. Accordingly, I authorize the landlord to deduct \$25.00 from the tenant's security deposit.

Conclusion

The tenancy ends effective November 30, 2015 by mutual agreement and the landlord is provided an Order of Possession effective at 1:00 p.m. on November 30, 2015.

The tenant's monetary claims against the landlord are dismissed with leave. The landlord's monetary claims against the tenant are dismissed with leave.

The landlord is authorized to deduct \$25.00 from the tenant's security deposit to recover one-half of the filing fee paid by the landlord.

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: November 05, 2015

Residential Tenancy Branch

