



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR OPR MNDC FF

Introduction:

Both parties filed Applications and attended the hearing. They agreed they received each other's evidence. The landlord's Application pursuant to the *Residential Tenancy Act* (the Act) requested orders as follows:

- a) A monetary order pursuant to Sections 46 and 67 for unpaid utilities;
- b) An Order of Possession pursuant to sections 46 and 55; and
- d) An order to recover the filing fee pursuant to Section 72.

The tenant applied to cancel the Notice to End Tenancy for unpaid utilities as she contended the matter has already been heard and decided.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that utilities are owed and they are entitled to an Order of Possession and a monetary order for utility arrears and to recover the filing fee?

Or is the tenant entitled to any relief?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced November 1, 2014, that rent is \$1000 a month plus utilities. The landlord said that the tenant owes \$384.33 for utilities from January to June 2015. She said the tenant paid 40% of the utilities to the upstairs tenant until January but then had a disagreement. The tenant argued that she should only pay 1/3 of the utilities based on the number of occupants of each unit. The landlord said they agreed with the upper tenant that they would pay the extra 7% to him. However, this tenant who lived downstairs did not pay anything since January 2015. They had to reimburse the upstairs tenant and he vacated at the end of May 2015.

In August 2015, the landlord provided the utility bills and amounts owed from January to June 2015. They showed the breakdown of the tenant's portion of 1/3 to her and gave her the demand notice in August 2015. The tenant acknowledged receipt of it.

The tenant contended that the matter was settled in the previous hearing and she owes nothing. The previous decision on August 10, 2015 noted that the tenant had not been given 30 day written notice to pay the outstanding utilities before issuing the Notice to End Tenancy as required under section 46 of the Act. It also noted that the tenancy agreement did not specify a percentage or amount the tenant must pay for utilities. The Notice to End Tenancy was set aside in that hearing.

The landlord said for this hearing, they issued the 30 day written notice to pay the outstanding utilities on August 24, 2015 and the Notice to End Tenancy was issued in October 2, 2015. Furthermore, they pointed to the evidence of agreement they made between the upper and lower tenants that the lower tenant would pay 1/3 of the utilities and they would cover the difference between that and 40% which is what had been negotiated originally between the tenants.

The tenant also submitted that she had paid for the internet for both tenants and also paid \$150 in cash to the upper tenant. The landlord said that after the disagreement in January, the upper tenant got his own internet and she knows nothing of a cash payment to him. She said he was a nice man who appeared honest to her.

In evidence is the Notice to End Tenancy for unpaid rent, emails between the parties and the previous decision.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis:

I find the upstairs tenant had the right to claim against the landlord for the unpaid portion of the lower tenant's utilities. Although the lower tenant said in the hearing that she if she owed any money, it was to the upstairs tenant who has since vacated. She asserted she owed no money to the landlord. However I find,

Residential Policy Guideline 1:2 provides:

2. If the tenancy agreement requires one of the tenants to have utilities (such as electricity, gas, water etc.) in his or her name, and if the other tenants under a different tenancy agreement do not pay their share, the tenant whose name is on the bill, or his

or her agent, may claim against the landlord for the other tenants' share of the unpaid utility bills.

I find this tenant's lease clearly states her rent is "+ utilities" and she has a responsibility to pay the landlord for the portion of her utility bill which she did not pay to the upper tenant. I find there was a certainty of agreement made with her to pay 1/3 of the joint bills when she objected to paying 40% and the landlord's demand letter clearly calculates this. I find insufficient evidence to support the tenant's contentions that she paid certain amounts in cash or reimbursed the upper tenant in other ways. I find the landlord entitled to an Order of Possession pursuant to section 46 as the weight of the evidence is that there are unpaid utilities.

After discussing the result with the parties, the parties tried to negotiate a settlement. After discussing it, they settled on the following terms and conditions:

Settlement Agreement:

- 1. The parties will try to maintain a good and peaceful relationship.**
- 2. The parties agree the tenant owes \$300 in full settlement of the utility bills and any other matters to August 2015.**
- 3. The landlord will receive an Order of Possession effective December 31, 2015 which they agree not to enforce provided the tenant pays \$300 by December 31, 2015.**

On the tenant's application, the onus is on her to prove on the balance of probabilities that she is entitled to a rent refund or rebate for loss of her personal privacy and enjoyment. She cites the source of the harassment and stress as the landlord threatening eviction over the unpaid utilities and of not understanding the previous decision was final. I find the weight of the evidence is that the tenant did not pay her utilities since January 2015. I find the landlord was within his legal rights under section 46 of the Act to serve Notices to End Tenancy and send demand letters for payment. I find it is not harassment to pursue legal remedies. Furthermore, I find the previous decision was not a 'final' decision as the landlord had not sent a 30 day demand letter for payment and this was part of the reason for cancelling the previous Notice. I find the landlord subsequently sent the necessary demand letter in conformance with section 46 of the Act and proved to my satisfaction that the tenant had negotiated with them and the upper tenant for her to pay 1/3 of the utilities but had not paid. I dismiss the Application of the tenant.

Conclusion:

Based on the above noted settlement agreement, I find the landlord entitled to an Order of Possession effective December 31, 2015 which they agree not to enforce provided the tenant pays \$300 as promised by December 31, 2015.

I also find the landlord entitled to a Monetary Order for \$300 which they may enforce after December 31, 2015 if the tenant does not pay as promised. The filing fee is part of the settlement for \$300.

I dismiss the application of the tenant in its entirety without leave to reapply. No filing fee was involved.

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: December 09, 2015

Residential Tenancy Branch

