



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, OPR, MNR, MNSD, FF
CNC, CNR, MNDC, MNSD, OLC, FF, O

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenants. The landlord has applied for an Order of Possession for unpaid rent or utilities; for an order of Possession for cause; for a monetary order for unpaid rent or utilities; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application. The tenants have applied for an order cancelling a notice to end the tenancy for unpaid rent or utilities; for an order cancelling a notice to end the tenancy for cause; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for a monetary order for return of all or part of the pet damage deposit or security deposit; for an order that the landlord comply with the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord.

The landlord and one of the named tenants attended the hearing, and the tenant also represented the other named tenant. The landlord served the Landlord Application for Dispute Resolution and notice of this hearing to each tenant individually by registered mail on December 10, 2015 and orally provided tracking numbers assigned by Canada Post. The landlord was permitted to provide to me by facsimile after the hearing concluded proof of such mailing. I have received a copy of a Canada Post cash register receipt bearing that date as well as 2 Registered Domestic Customer Receipts containing the same tracking numbers, and I am satisfied that both tenants have been served in accordance with the *Residential Tenancy Act*.

The parties each gave affirmed testimony and provided evidentiary material in advance of the hearing. The parties were given the opportunity to question each other with respect to the testimony and evidence provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

At the outset of the hearing the parties advised that the tenants have vacated the rental unit and the landlord's applications seeking an Order of Possession are withdrawn. Similarly, the tenants' application to cancel the notice to end the tenancy for unpaid rent or utilities and the application to cancel the notice to end tenancy for cause are withdrawn.

Issue(s) to be Decided

The issues remaining to be decided are:

- Has the landlord established a monetary claim as against the tenants for unpaid rent or utilities?
- Should the landlord be permitted to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?
- Have the tenants established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for repairs, moving expenses and liquidated damages?
- Have the tenants established a monetary claim as against the landlord for all or part of the pet damage deposit or security deposit?
- Have the tenants established that the landlord should be ordered to comply with the *Act* regulation or tenancy agreement?

Background and Evidence

The tenant testified that this fixed term tenancy began on January 24, 2015 and was to expire on January 23, 2016, however the tenants vacated the rental unit on December 13, 2015. Rent in the amount of \$2,800.00 per month was payable on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$1,400.00 as well as a pet damage deposit in the amount of \$600.00, both of which are still held in trust by the landlord. The rental unit is a single family dwelling, and a copy of the tenancy agreement has been provided.

The tenant further testified that at the beginning of the tenancy the tenants gave the landlord post-dated cheques for rent commencing February 1, 2015 through January 1, 2016, and the landlord didn't request any rent for moving in early. Then the landlord sent an email saying that he didn't want to continue the tenancy. The tenant contacted a lawyer who wrote to the landlord and when the tenant returned home from the lawyer's office she found a 1 Month Notice to End Tenancy for Cause and a 10 Day

Notice to End Tenancy for Unpaid Rent or Utilities in the door. Copies of both notices have been provided and they contain expected dates of vacancy of December 31, 2015 and December 8, 2015 respectively. Both notices are dated November 27, 2015.

The tenant disputed both notices, but no one told the tenant that she didn't have to move out, and the tenant had to rush to move out because the landlord told her to. It was holiday season and impossible to hurry to get movers during that time of year, and the landlord knew the tenant was on holidays. The tenant left for holidays sometime after the 15th of December and moved out before that so she could enjoy her vacation. The tenant claims moving expenses from the landlord in the amount of \$2,015.50 for causing the tenant to move in a hurry.

The tenancy agreement specifies liquidated damages equivalent to one month's rent if the tenants break the terms of the lease. The landlord has broken the terms of the lease, and the tenants claim liquidated damages from the landlord in the amount of \$2,800.00.

The tenants also claim \$134.00 for a power head for the central vacuum in the rental unit. The hose was there when the tenants moved in, but not the end of it. One can't vacuum without it, so the tenant purchased one and left it there when she moved out.

The tenants also claim \$110.00 for repair to the dishwasher. It was working at the beginning of the tenancy but suddenly stopped working.

Hydro was in the tenants' name, and the other tenant usually dealt with the landlord and the tenant didn't know that the gas bill was the tenants' responsibility. The tenant does not agree that the tenants owe the landlord for rent for the first week of the tenancy, but does agree that utilities in the amount of \$755.26 are owed to the landlord.

The landlord testified that the tenancy began on January 23, 2015 and on November 29, 2014 the landlord sent an email to the tenants requesting pro-rated rent for January, 2015 and indicated how that rent should be paid. The landlord agrees that the tenants gave post-dated cheques for February 1, 2015 through to the end of the fixed term. The landlord sent to the tenants a follow-up email on February 16, 2015 again requesting a pro-rated amount of \$700.00 for January, 2015. Copies of emails between the parties have been provided. The landlord also testified that another email was sent on July 13, 2015 reminding the tenants. The landlord and the tenant he emailed with agreed to round it off to \$700.00, being 1 week of rent (\$2,800.00 divided by 4 weeks).

The landlord has also provided copies of notices to end the tenancy for unpaid rent or utilities:

- The first is dated November 7, 2015 and contains an effective date of vacancy of November 17, 2015 for unpaid rent in the amount of \$2,800.00 that was due on November 1, 2015 and for unpaid utilities in the amount of \$755.26 following written demand on October 26, 2015.
- The next is dated November 27, 2015 and contains an effective date of vacancy of December 8, 2015 for unpaid utilities in the amount of \$755.26 following a written demand on October 26, 2015.
- The next is dated December 2, 2015 and contains an effective date of vacancy of December 15, 2015 for \$700.00 of unpaid rent that was due on January 23, 2015.
- Another contains the same dates and is for unpaid rent in the amount of \$2,800.00 that was due on December 1, 2015.

The landlord testified that the amount of utilities written in the notice was pro-rated incorrectly and on both the notice dated November 7, 2015 and the one dated November 27, 2015 which ought to read \$724.30. However, those notices do not include outstanding utilities for November or December, 2015 which are \$119.04 and \$180.05 respectively. The amount currently owed is \$1,023.39 to the end of December, 2015 ($\$724.30 + \$119.04 + \$180.05 = \$1,023.39$). Copies of all natural gas bills have been provided with the exception of the latter claimed by the landlord in the amount of \$180.05.

The landlord applied for an Order of Possession and a monetary order for unpaid rent by way of the Direct Request Process and obtained a monetary order for unpaid rent in the amount of \$2,800.00 for unpaid rent for December, 2015, but the portion of the application for unpaid rent from January, 2015 was dismissed with leave to reapply. A copy of the Decision has not been provided however the landlord testified that it specifies that a participatory hearing was necessary to determine the merits of that portion of the application. This is the landlord's re-application, and the landlord also seeks to keep the security deposit and pet damage deposit in partial satisfaction of the monetary order made in December, 2015 for unpaid rent as well as for the \$700.00 owed for January, 2015.

The landlord agrees that the tenants were told to move out. They made 7 late payments of rent and the landlord served the notices to end the tenancy. The tenants disputed the notices and then told the landlord they would be moving out at the end of the month. The landlord claims liquidated damages, and denies any moving expenses or liquidated damages to the tenants. Any early move on the part of the tenants was of their own accord. One of the clauses in the Addendum to the tenancy agreement states: "Liquidated Damages: If the tenant terminates this agreement before the end of

the first year, the tenant will reimburse the landlord one month's rent." The landlord claims liquidated damages in the amount of \$2,800.00 as against the tenants.

Keys were returned on December 22, 2015 when the other tenant and the landlord completed the move-out condition inspection report, and the tenants left belongings and minor damages. The landlord asked him for a forwarding address and he replied by text message on January 10, 2016.

The landlord agrees to the cost incurred by the tenants for the dishwasher, but not for the vacuum head. The vacuum is not included in the rent, there never was a power head and it's not in the rental unit now.

Analysis

Firstly, with respect to the landlord's claim for unpaid rent, the tenancy agreement specifies that the tenancy began on January 24, 2015 and the parties agree that the tenants paid rent commencing February 1, 2015. The tenant claims that there was no request by the landlord for any rent for January, 2015 but also testified that the other tenant usually dealt with the landlord. The landlord testified that the other tenant agreed to pay it and the parties emailed each other. The landlord has provided copies of the emails and I find that the tenant, at least one tenant agreed to pay \$700.00 as a pro-rated amount, and considering rent is payable on the 1st day of each month, I find that the landlord is entitled to \$700.00.

With respect to the landlord's claim for unpaid utilities, the tenant agrees owing the landlord \$755.26 for utilities, and the landlord testified that the unpaid amount to the end of December, 2015 is actually \$1,023.39. The landlord has provided copies of all bills with the exception of the final bill. However, I accept the testimony of the landlord, considering that this is January and the final bill for December was not received before the deadline for submitting evidence, and I find the amount to be reasonable. I find that the tenants owe natural gas utilities to the landlord in the amount of \$1,023.39.

With respect to parties' testimony regarding liquidated damages, I refer to the tenancy agreement which simply states that if the tenant terminates before the end of the first year, the tenant will reimburse the landlord one month's rent. It doesn't say anything about the landlord ending the tenancy early. However, it is a very ambiguous term, in that it doesn't indicate what the "liquidated damages" refer to, and says nothing about whether or not is a penalty. I find that the term is unenforceable, and I dismiss the tenants' application and the landlord's application for liquidated damages.

With respect to the tenants' claim for moving expenses, considering the notices to end the tenancy given by the landlord, I find that the landlord had a right under the *Act* to end the tenancy. The tenant testified that she didn't know that after they were disputed, the tenant didn't have to rush to move out and that it would be determined at arbitration. The landlord can't be held responsible for the tenants' misunderstanding of the law and the arbitration process. Therefore, I dismiss the tenants' application for moving expenses.

With respect to the tenants' claim for the repair costs to the dishwasher, the landlord does not deny that claim, and I order the tenants recover the sum of \$110.00.

With respect to the tenants' claim for the cost of the vacuum head, there is no evidence before me to conclude whose testimony is correct with respect to whether or not it's still in the rental unit. However, the tenancy agreement does not specify that it is included, and the landlord did not agree to provide it at the beginning of the tenancy, and therefore, without the landlord's express consent, the tenant cannot claim it at the end of the tenancy.

The tenant did not lead any testimony with respect to the application for an order that the landlord comply with the *Act* or the tenancy agreement, and considering that the tenancy ended prior to this hearing, I dismiss that portion of the tenants' application.

The landlord currently holds a security deposit in the amount of \$1,400.00 and a pet damage deposit in the amount of \$600.00 which are owed to the tenants. Although providing a forwarding address in writing by way of a text message is generally not an acceptable method under the *Act*, the landlord agrees that he received that address from the tenants on January 10, 2016 and the tenant did not know how or when it was provided. The landlord filed the application for dispute resolution on December 4, 2015 and therefore, I find that doubling under the *Act* is not applicable.

Having found that the landlord is owed \$700.00 for rent for January, 2015 and utilities amounting to \$1,023.49, and the tenants are owed \$2,110.00 ($\$110.00 + \$1,400.00 + \$600.00 = \$2,110.00$), I set off the amounts and I grant a monetary order in favour of the tenants in the amount of \$386.51. Since both parties have been partially successful, I decline to order that either party recover the filing fee.

The landlord currently holds both deposits and is in possession of a monetary order in the amount of \$2,800.00 as against the tenants. I find that the method of setting off a previous order from a security deposit or pet damage deposit makes it more confusing and difficult to enforce, and I cannot amend or cancel a monetary order already made.

Therefore, I grant a monetary order in favour of the tenants in the amount of \$386.51 and I leave it to the parties to set off the awards.

Conclusion

For the reasons set out above, the landlord's applications for an Order of Possession are hereby dismissed as withdrawn.

The tenants' applications for orders cancelling notices to end the tenancy are both dismissed as withdrawn.

The tenants' application for an order that the landlord comply with the *Act*, regulation or tenancy agreement is hereby dismissed.

I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$386.51.

This order is 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: January 22, 2016

Residential Tenancy Branch

