



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes opr, opc, mnr, mndc, ff

Introduction

The landlord has applied for an Order of Possession, a Monetary Order for unpaid rent and utilities, and to recover the landlord's filing fee.

The landlord and tenant both attended the hearing and provided testimony. There is no dispute as to the service upon the tenant of the landlord's application.

The landlord confirmed at the hearing that the tenant had vacated the premises February 1, 2017. No Order of Possession is now needed, and that portion of the landlord's claim is dismissed.

Issues to Be Decided

- Is money owed for rent and utilities by the tenant to the landlord?
- Is the landlord entitled to recover the filing fee from the tenants?

Background and Evidence

The landlord testified that this tenancy began October 1, 2016. Monthly rent was \$1,000.00 payable in advance on the first day of each month. Utilities for the previous month were payable on the first of the month. In October, the tenant paid a security deposit of \$500.00 and paid rent of \$1,000.00. On November 1, 2016, \$1,185.00 was paid, representing rent for November and utilities for October. On December 1, \$1,185.00 was paid, representing rent for December, and utilities for November. On January 1, the tenant's boyfriend advised the landlord the tenancy would be ending at the end of January, and offered to pay \$685.00 and requested that the landlord apply the security deposit towards the balance owed. The landlord refused to do so, and nothing was in fact paid for January. The following day the landlord issued a 10 day Notice to End Tenancy, alleging a failure to pay January's rent of \$1,000.00 and utilities of \$185.00. The tenant filed no dispute of this Notice, and made no further payment to the landlord. The tenant vacated the premises February 1, 2017. The landlord further testified that text messages were sent to the tenant, confirming receipt of payments made.

The tenant testified that the sum of \$1,187.00 was paid in cash on each of October 1, November 1, December 1 and January 1. A \$500.00 security deposit was also paid on October 1. No receipts were ever given, and no written tenancy agreement was ever

provided. The tenant testified that a written notice of the ending of the tenancy was given to the landlord on December 23, 2016 by way of text message given by the tenant's boyfriend. He texted the landlord a message that he intended to give a puppy to the tenant for Christmas, and if that was not OK with the landlord, they would find other living arrangements.

Analysis

There is conflicting evidence from the parties as to the amount payable or paid towards the monthly utility payments, as to whether or not a utility payment was made by the tenant in October, and whether or not a payment of rent and utilities was made in January by the tenant. In reconciling this conflicting testimony, I take note that the landlord provided no supporting evidence of having provided a written receipt of the cash payments made by the tenant, and provided no copies of the alleged text messages confirming such payments. The landlord provided no written tenancy agreement which specified the amount of the utilities payments. In this regard the Residential Tenancy Regulation specifically requires that a landlord must give the tenant a receipt for rent paid in cash, and also requires that a tenancy agreement be in writing. I further note that the burden of proof in this case lies with the landlord to establish on a balance of probabilities his claim of unpaid rent and utilities.

The landlord should have tendered into evidence a written tenancy agreement that clarified the amount of the utilities, and whether the utilities were payable in advance or not. He should have also tendered into evidence copies of receipts issued for cash payments, or at the very least copies of his text messages that confirmed such payments as and when received. In the absence of these required pieces from the landlord and in the face of the conflicting evidence, I draw an adverse inference as against the landlord with respect to the issue of the payment of utilities. I therefore find, as testified to by the tenant that utility payments in the sum of \$187.00 were in fact made in advance on October 1, November 1, and December 1 by the tenant.

With respect to the landlord's claim of rent and utilities for January, however, I prefer the landlord's testimony over that of the tenant. I accept the landlord's testimony that the tenant's boyfriend offered to pay half the rent only plus utilities, with a request to the landlord to apply the deposit towards the balance, and that the landlord declined to accept that offer. In deciding this issue, I take note that there is no testimony from the tenant's boyfriend at all about this issue, confirming or denying these facts. I further note that on January 2, 2017, the day after the rent and utility payment was due, the landlord served the tenants with a 10 day Notice for unpaid rent and utilities, which specified that January's rent and utilities were unpaid. This Notice was never formally disputed by the tenant, and the tenant also did not vacate within 10 days as required by that Notice, in the absence of any dispute. I therefore draw an adverse inference as against the tenant, based upon the absence of any such dispute. I further find that landlord's explanation as to the offer of payment of January 1 to be entirely plausible.

As a result, I find that the sum of \$1,000.00 is owing to the landlord for January rent, and the sum of \$187.00 is owing for January utilities.

I dismiss the landlord's claim for February's rent (no claim is made for February utilities). In the absence of a dispute of either the one month Notice or the 10 day Notice, and coupled with the landlord's own testimony that the tenant's boyfriend advised they moving at the end of January (when the portion of January rent was offered) the landlord knew or should have known that the tenancy was ending in January. However, I note that the landlord alleges that the premises were left by the tenants in a dirty and damaged condition. It may be therefore, that the landlord will suffer a loss of rental income for all or part of February. Once any such claim is quantified, the landlord is at liberty to file a further claim against the tenant for any loss related to the condition of the premises or any loss of rental income attributable to the tenant.

As the landlord is successful as to apportion of the claim, I also award recovery of the \$100.00 filing fee from the tenant.

Conclusion

The tenant must pay the sum of \$1,287.00 to the landlord, representing January's rent and utilities, and the landlord's filing fee.

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: February 02, 2017

Residential Tenancy Branch