



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, MND, MNSD, FF

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution (the "Application") under the Residential Tenancy Act (the "*Act*") for:

- an order of possession for unpaid rent;
- a monetary order for unpaid rent;
- a monetary order for compensation for loss;
- a monetary order for damage to the unit;
- a monetary order to keep all or part of the security deposit; and
- recovery of the filing fee paid for this application from the tenant.

As the tenants did not attend the hearing, service of the landlord's Application and Notice of a Dispute Resolution Hearing (the "Notice of Hearing") were considered.

The landlord testified that the tenants were each served separately with a copy of the landlord's Application and Notice of Hearing by registered mail. The landlord testified that the registered mail for each tenant was sent to the tenants' address on February 2, 2017. The landlord provided the Canada Post Customer Tracking Receipts with the Tracing Numbers to confirm both mailings. Taking into account the undisputed testimony of the landlord and in accordance with section 89 of and 90 the *Act*, I find that the tenants are each deemed served with a copy of the landlord's Application and the Notice of Hearing on February 7, 2016, the fifth day after the registered mailing.

Preliminary and Procedural Matters

At the start of the hearing, the landlord testified that the tenants moved out of the rental unit sometime on or about the middle of February 2017. The landlord was not able to specify the exact date. Accordingly, I dismiss the landlord's claim for an order of possession for unpaid rent as it is no longer necessary.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") states that, in the course of the dispute resolution proceeding, if the

arbitrator determines that it is appropriate to do so, he or she may dismiss the unrelated disputes contained in a single application with or without leave to re-apply.

Upon review of the landlord's application I have determined that I will not deal with all the dispute issues the landlord has placed on their application. For disputes to be combined on an application they must be related. Not all the claims on this application are sufficiently related to the main issue relating to the Notice to end tenancy for unpaid rent. Therefore, I will deal with the landlord's requests for a monetary order for unpaid rent; a monetary order to keep all or part of the security deposit; and for recovery of their filing fee. I dismiss the balance of the landlord's application with leave to re-apply.

The landlord was permitted to submit late evidence by fax to be received by the Residential Tenancy Branch by no later than 4:00 p.m. on the date of the hearing. The evidence that the landlord was permitted to submit was limited to a copy of the most recent utility bill issued by the City along with copies of emails and/or correspondence exchanged between the parties regarding payment of the utilities. The landlord submitted the further documentation as permitted within the timeframe granted.

Issues to be Decided

- Is the landlord entitled to a monetary order for unpaid rent?
- Is the landlord entitled to a monetary order to keep all or part of the security deposit?
- Is the landlord entitled to recovery of the filing fee paid for this application from the tenant?

Background and Evidence

The landlord's evidence established that the tenants entered into a one year fixed term tenancy starting March 1, 2016 and ending March 1, 2017. Rent in the amount of \$2,600.00 is due on the first day of each month. The landlord collected a security deposit from the tenants in the amount of \$1,300.00 on March 1, 2016.

The landlord testified that the tenants did not pay rent for each of the months of November and December 2016; and January and February 2017. The landlord filed their Application on January 31, 2017 which gave rise to a request by the landlord to amend their Application to include the unpaid rent for the month of February 2017. The landlord is seeking unpaid rent in the total amount of \$10,400.00.

The landlord testified that he served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") on January 23, 2017 by posting a copy on the tenants' door. As the landlord's application for an order of possession is dismissed, I find I do not need to consider the 10 Day Notice further, except in regard to the rent money still owed to the landlord from the tenants.

The landlord testified that the tenants were responsible for paying utilities which were not included in the rent. The landlord supplied a copy of a document signed by both tenants authorizing the City to bill the tenants directly for the utility charges. The landlord testified that the tenants have not paid the utility charge for the water and that there is an outstanding balance owing to the city in the amount of \$992.18. The landlord submitted a bill from the City dated January 31, 2017 which supports the landlord's testimony. As owner of the property, the landlord testified that he is responsible to the City for the unpaid amount. The landlord submitted emails exchanged with the male tenant about the unpaid utilities. The landlord is seeking a monetary order in the amount of \$992.18 for the unpaid utilities.

The landlord is seeking to recover the \$100.00 filing fee for their application from the tenants.

The landlord is requesting to apply the tenants' security deposit in the amount of \$1,300.00 against the amounts owed by the tenants.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

As the tenants were served with the Application and Notice of Hearing and did not attend the hearing, I consider this matter to be unopposed by the tenants. As a result, I find the landlord's application is fully successful as I find the evidence supports the landlord's claim and is reasonable.

I find that the tenants were required to pay the monthly rent amount of \$2,600.00 for each of the months of November and December 2016; and January and February 2017. I find that the tenants are not prejudiced by the landlord's request to amend their application to include the full amount of unpaid rent as the tenants knew or ought to have known that they were required to pay the rent when due. Accordingly, I find that the landlord has established a total monetary claim in the amount of \$10,400.00 for

unpaid rent for each of the months of November and December 2016; and January and February 2017.

Section 47(6) of the *Act* allows a landlord to treat the unpaid utility charges as unpaid rent and may give notice to end the tenancy under this section only if:

- (a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and
- (b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them.

Based upon the tenancy agreement and the document signed by the tenants authorizing the City to bill the tenants directly for utilities, I find that there is sufficient evidence to satisfy me that the tenants are responsible to the landlord for payment of utility charges paid directly to the City. However, I find that there is insufficient evidence to satisfy me that the landlord gave a written demand for payment of the utilities giving the tenants 30 days notice to pay the outstanding amounts. I find that the emails submitted by the landlord are insufficient to constitute written demands as required by section 47(6)(b) of the *Act*. Emails are not considered written notice. Furthermore, the emails are more in the nature of inquiries rather than demands. As the landlord has not complied with section 47(6) of the *Act*, I dismiss the landlord's claim for the unpaid utilities with leave to re-apply.

As the landlord's application is substantially successful, I find that the landlord is entitled to recovery of the \$100.00 filing fee from the tenants.

I allow the landlord's request to apply the tenants' security deposit in the amount of \$1,300.00 against the amounts owed by the tenants.

Based upon the foregoing, I find that the landlord is entitled to a monetary order in the amount of \$9,200.00 as follows:

| | |
|-----------------------------|---------------------|
| November 2016 Unpaid Rent | \$ 2,600.00 |
| December 2016 Unpaid Rent | \$ 2,600.00 |
| January 2017 Unpaid Rent | \$ 2,600.00 |
| February 2017 Unpaid Rent | \$ 2,600.00 |
| Filing Fee | \$ 100.00 |
| Subtotal | \$ 10,500.00 |
| Less Security Deposit | \$ 1,300.00 |
| Total Monetary Order | \$ 9,200.00 |

Conclusion

I dismiss the landlord's application for a monetary order for compensation for loss; and a monetary order for damage to the unit with leave to re-apply.

Pursuant to section 67 of the *Act*, the landlord is granted a monetary order in the amount of \$9,200.00 for unpaid rent and the filing fee, less the security deposit, which must be served on the tenant(s) as soon as possible. Should the tenant(s) fail to comply with this monetary order, it may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court. The Landlord may apply again for the utility bill charges and other damages arising from the tenancy.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: March 06, 2017

Residential Tenancy Branch