



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MND, MNR, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking an Order of Possession and a monetary order for unpaid rent or utilities; a monetary order for damage to the unit, site or property; and to recover the filing fee from the tenants for the cost of the application.

The landlord and both tenants attended the hearing and the landlord and one of the tenants gave affirmed testimony. The parties were given the opportunity to question each other, and the parties confirmed that all evidence has been exchanged.

At the commencement of the hearing the landlord withdrew the application for an Order of Possession.

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?
- Has the landlord established a monetary claim as against the tenants for damage to the unit, site or property?

Background and Evidence

The landlord testified that this month-to-month tenancy began on October 1, 2015 and the tenants moved out sometime in September, 2016. Rent in the amount of \$1,500.00 per month was payable on the 1st day of each month. The tenants were responsible for paying all utilities. No security deposit or pet damage deposit was collected from the tenants, and no written tenancy agreement exists. The rental unit is a single family dwelling. No move-in or move-out condition inspection reports were completed, and the tenants were renovating the home.

The landlord further testified that the tenants failed to pay rent for the month of September, 2016 and the landlord caused the tenants to be served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which has been provided by the tenants. It is dated September 2, 2016 and contains an effective date of vacancy of September 12, 2016 for unpaid

rent in the amount of \$1,500.00 that was due on September 1, 2016. The tenants did not pay the rent, but moved out of the rental unit, and the landlord claims \$1,500.00 for unpaid rent.

The tenants also failed to pay the City utility bill, a copy of which has also been provided, and the landlord seeks compensation for paying it in the amount of \$1,147.66. The bill shows that amount owing up to October 11, 2016 and the billing period is every 2nd month. It shows that the previous bill while the tenants lived there is outstanding at \$835.00, and all of the October entries on the bill should be cut in half to compensate the landlord to the end of September, 2016. The landlord changed the name on the City account from that of the landlord to the tenant, but did not get the tenant's express permission. The landlord's mother was looking after the rental unit for a time.

The rental unit suffered a leak in August, 2016 from the furnace into the basement and under flooring and basically just sat there. The landlord had an HVAC technician go there in the winter of 2017 who traced it back to the outside HVAC unit. The unit outside had been moved and the copper pipe was kinked causing it to back up into the house. Someone had to have moved it in some way to have kinked the pipe. The landlord claims \$590.92 to replace the original laminate flooring with other flooring, and a copy of an invoice has been provided. It is not entirely readable but the landlord testified it is for "Duraclase Duradec Flooring" and the landlord is not certain if it is more or less expensive flooring than laminate.

The tenants did not leave the keys that give access to the rental unit, locked the doors that give access to the rental unit, and did not leave a forwarding address. The landlord had a phone number for the tenants but didn't call because the parties didn't get along well. The landlord had the locks changed and left it at that and has provided an invoice in the amount of \$125.95. The landlord claims that amount as against the tenants.

The tenant testified that there was no tenancy agreement or lease signed by the parties in spite of asking the landlord's agent. The landlord sent quite a few tenancy agreements but the tenants didn't sign them because each one contained terms that the tenants hadn't agreed to.

The landlord's agent didn't want a security deposit and said the tenants were to pay hydro, but the City bills should be delivered to her for payment. The tenants complied with the first bill and the second. However, the landlord's agent left the second bill on the tenant's china cabinet, in error she thought, but then the landlord transferred the account into the other tenant's name without asking.

There were verbal agreements made between the parties but nothing in writing. The parties agreed to rent in the amount of \$1,500.00 and the tenants were to renovate while looking for a place. There was a dispute between the parties and the tenants felt bullied to move out. No one contacted the tenants about unpaid rent for September prior to issuing the notice to end the tenancy, which says nothing about unpaid utilities.

When the tenants moved in, the basement had spiders, including black widows, cobwebs, and when the parties went into the basement, flooring was lifting in 2 bedrooms, more in one room than the other. The landlord's agent said the previous owner put thick underlay down so it was separating and they'd get to it but would work on the top floor first. On August 13, 2016 the tenant was present when her husband sent the landlord a text message with photographs showing pooling in the vicinity of the furnace and hot water tank. The landlord responded a few days later, and eventually a man came and looked at the water and the tenant's husband had to explain how everything works. The man didn't look at much or do anything. After he left, the tenant's husband called the landlord concerned of mould. The landlord wanted no part of it and told the tenant to deal with a fan to dry it out. No one showed up at all after that and the tenants decided to find another place.

This was not a rental; the parties agreed that the tenants would renovate and were never compensated.

The tenant further testified that all keys were left on the counter. The tenants locked the house after cleaning, the responsible thing to do, and the landlord or the landlord's agent had another key to get in.

Analysis

Firstly, a tenancy agreement exists even if not in writing by virtue of paying rent in exchange for residing in a rental unit. In this case, I find that the tenancy was on a month-to-month basis for rent in the amount of \$1,500.00 per month. I also find that the tenancy ended in September, 2016 and the landlord has established that the tenants failed to pay rent for that month, and the landlord has established a claim of \$1,500.00 for unpaid rent.

The parties agree that an agent acted for the landlord, who was not called to testify for this hearing. The tenant testified that the City bills were included in the rent by verbal agreement with the landlord's agent at the beginning of the tenancy. The parties also agree that the landlord had the City account changed to the tenant's name without permission. In the circumstances, I am not satisfied that the landlord has established that the tenants were responsible for the City bills and I dismiss the landlord's application for \$1,147.66 for outstanding utilities.

The *Residential Tenancy Act* and the regulations put the onus on the landlord to ensure that move-in and move-out condition inspection reports are completed, and specifies that the reports are evidence of the condition of the rental unit at the beginning and end of the tenancy. Also, in order to be successful in a claim for damages, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;

3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate the damage or loss suffered.

In this case, there are no move-in or move-out condition inspection reports, and I am not satisfied that the landlord has established that the damage to the floors was caused by the tenants' failure to comply with the *Act* or the tenancy agreement, and I dismiss that portion of the landlord's claim.

With respect to changing locks, the tenants deny taking the keys that give access to the rental unit, and the tenant testified they were left in the rental unit at the end of the tenancy. The landlord had a phone number but chose to not call the tenants about leaving the keys. I accept that the tenants locked the doors but the landlord ought to have had another set. I am not satisfied that the landlord's claim has been made out with respect to changing locks, or that the landlord did what was reasonable to mitigate.

Since the landlord has been partially successful with the application the landlord is also entitled to recovery of the \$100.00 filing fee.

Conclusion

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

I hereby grant a monetary order in favour of the landlord as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,600.00.

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: April 20, 2017

Residential Tenancy Branch