



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GSA CONSULTING
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, CNR, ERP, RP, PSF, RR, OLC, FF

Introduction

This was a cross-application hearing for Dispute Resolution. The matter was set for a conference call hearing.

The Landlord applied for an order of possession and a monetary order for unpaid rent and utilities, and to recover the cost of the application fee.

The Tenants applied to cancel a notice to end tenancy; for an order that the Landlord comply with the Act; for an order that the Landlord make repairs to the unit; for the Landlord to provide services or facilities required by law; and for a rent reduction.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Tenants testified that they filed for Dispute resolution on April 21, 2017, after receiving a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities from the Landlord on April 14, 2017. The Tenant A.W. testified that the Notice was found attached to their door on April 14, 2017. During the hearing, the Tenant M.W. testified that the Tenants did not pay the rent owing within 5 days of receiving the 10 Day Notice.

Section 46 (5) of the Act states if a Tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

I find that the Tenants' Application to dispute the 10 Day Notice is late. The Tenants did not dispute the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 14, 2017 within 5 days of receiving it. Even if the Tenants had disputed the Notice in time, the Tenants later testified that the outstanding rent was not paid within 5 days of receiving the Notice.

Section 55 of the Act states that a Landlord is entitled to an order of possession of the rental unit if the Tenants application to cancel the notice is dismissed or if the Tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

The Tenants testified that they withheld payment of the rent because they feel the Landlord should be making repairs to the rental unit and dealing with pests. The Tenant, M.W. testified that he did not apply for dispute resolution to resolve these issues prior to withholding the payments of the rent.

Section 26 of the Act states that a Tenant must pay rent when it is due under the tenancy agreement, whether or not the Landlord complies with this Act, the regulations or the tenancy agreement, unless the Tenant has a right under this Act to deduct all or a portion of the rent.

I find that the Tenants application to dispute the 10 Day Notice was late and the Tenants did not have the right to withhold payment of the rent. The Tenants' request to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 14, 2017 is dismissed.

Pursuant to section 46(5) of the Act the Tenancy has ended. Pursuant to section 55 of the Act the Landlord is entitled to an order of possession.

The primary issue to be determined in this hearing is whether or not the tenancy has ended due to unpaid rent or utilities. The Residential Tenancy Branch Rules of Procedure 2.3 allow an Arbitrator to dismiss unrelated claims with or without leave to reapply. Since the tenancy has ended, the Tenants' request for repairs, and for the Landlord to provided services or facilities is dismissed without leave to reapply. The

Tenants' request for compensation in the form of a rent reduction is dismissed with leave to reapply.

The Hearing proceeded on the Landlord's Application for a monetary order for unpaid rent and utilities.

During the hearing the Landlord withdrew his claim for the Tenants to pay late fees due to late rent payments.

Issues to be Decided

- Is the Landlord entitled to an order of possession?
- Is the Landlord entitled to compensation for unpaid rent and utilities?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The parties testified that the tenancy commenced on August 15, 2015. Rent in the amount of \$1,800.00 was due on the first day of each month. The Tenants paid a security deposit of \$900.00 to the Landlord.

The Landlord provided a copy of the tenancy agreement. The Tenancy agreement indicates that electricity, heat, and cablevision are not included in the rent.

The Landlord testified that there are two other rental units in the rental property. The Landlord testified that the Tenants rent the main three bedroom unit and there are two 1 bedroom units below. The Landlord testified that one of the rental units below are on the same gas, and hydro meter as the Tenants.

The Landlord testified that due to the other unit on the property sharing utilities, an agreement was reached with the Tenants for the Tenants to pay 60% of the gas bill, 80% of the hydro bill; and 50% of the cable bill.

The Tenant also testified that they reached an agreement for the Tenants to pay 60% of the gas bill, 80% of the hydro bill; and 50% of the cable bill. However, the Tenant stated he later found the agreement to be unfair due to shared use of the hot water tank.

Rent

The Landlord testified that the Tenants failed to pay the rent that was due under the tenancy agreement.

The Landlord issued the Tenants a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 14, 2017. The Notice states that the Tenant has failed to pay rent in the amount of \$7,800.00.

The Landlord testified that the Tenants owe rent for the following months:

<u>Month</u>	<u>Payment Received</u>	<u>Amount Owing</u>
November 2016	\$1,000.00	\$800.00
December 2016		\$1,800.00
January 2017	\$500.00	\$1,300.00
February 2017		\$1,800.00
March 2017	\$1,500.00	\$300.00
April 2017		\$1,800.00
May 2017		\$1,800.00
	Total owing:	\$9,600.00

The Landlord testified that the Tenants often paid the rent using electronic email transfers. The Landlord provided copies of the email transfers for rent payments including the three rent payments received above. The Landlord provided a copy of an email exchange between the parties dated May 5, 2017. In the email the Landlord sets out the rent owing and the rent payments received from the Tenants since November 2016.

In response to the Landlord's claim for unpaid rent, the Tenants acknowledged that they did not pay the rent after receiving the 10 Day Notice. The Tenant M.W. testified that he only owes the Landlord \$4,800.00 for unpaid rent. The Tenant did not provide further testimony on when or how the rent was paid and he did not provide any documentary evidence to support his testimony that the rent was paid.

Utilities

The Landlord is seeking \$7,715.52 for unpaid utility costs. The Landlord provided a copy of an email exchange between the parties dated May 5, 2017. In the email the Landlord sets out the agreement the parties made with respect to payment of utilities.

The Landlord also provided a copy of emails dated August 2016, and September 2016, sent to the Tenants regarding payment of hydro, gas and internet. In the August 9, 2016, email the Landlord also sets out the agreement the parties made with respect to payment of utilities.

The Landlord acknowledged that he was ill for a lengthy period and did not forward the utility bills to the Tenants; however, he submitted that the Tenants are still responsible to pay their portion of the utility costs.

The Landlord submitted that the Tenants never made any payments towards these utility costs since August 2015.

Gas

The Landlord's application indicates that the Tenants owe \$2,664.01 for their portion of the gas service.

Hydro

The Landlord's application indicates that the Tenants owe \$2,969.81 for their portion of the hydro service.

Cable

The Landlord's application indicates that the Tenants owe \$2,081.70 for their portion of the cable and internet service.

In response to the Landlord's claims for utilities, the Tenant testified that he received the Landlord's documentary evidence including the utility receipts but he did not look at the receipts prior to the hearing. The Tenant M.W. acknowledged that they used utilities but submitted that they should not have to pay for using them as they should be included in the rent.

The Tenant M.W. testified that the parties did reach an agreement for the Tenants to pay 60% of the gas bill, 80% of the hydro bill; and 50% of the cable bill. However, the Tenant stated that he later found the agreement to be unfair due to shared use of the hot water tank. The Tenant does not agree to pay any amount.

Analysis

Based on the evidence and testimony before me, and on a balance of probabilities, I find as follows:

The Tenants did not dispute the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities within the time limits and testified that they did not pay the rent within 5 days of receiving the 10 Day Notice. I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective two days after service on the Tenants. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

I find that the Tenants owe the Landlord \$9,600.00 for unpaid rent. I prefer the evidence of the Landlord. The Landlord provided copies of emails sent to the Tenants documenting the unpaid rent amounts and also provided copies of electronic payments for rent received from the Tenants. The Tenants acknowledged that they did not pay the rent and did not provide any documentary evidence to support what rent was paid.

I find that the Tenants owe the Landlord for the utility costs. The Tenants acknowledged that an agreement was reached to share the costs of the utilities. The Tenants cannot unilaterally change their mind and not pay for utilities. If the Tenants did not want to honor the agreement, they could have applied for a dispute resolution hearing to decide the matter. I find that the agreement for the Tenants to pay 60% of the gas bill, 80% of the hydro bill; and 50% of the cable bill is binding on the Tenants. I find that the Tenants did not pay any of the utility costs.

While I acknowledge that the Landlord did not provide the Tenants with the utility bills during a prolonged period of illness, I find that the Tenants used the utilities and they are responsible to pay for their share of the costs.

I find that the Tenants owe the Landlord, \$7,715.52 for unpaid utility costs.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenants to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I find that the Landlord has established a total monetary claim of \$17,415.52 comprised of \$9,600.00 in unpaid rent as listed in the table; \$7,715.52 for utility costs; and the \$100.00 fee paid by the Landlord for this hearing.

I find that the Landlord is entitled to a monetary order in the amount of \$17,415.52. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

Conclusion

The Tenants did not dispute the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities within the 5 day time limit and testified that they did not pay the rent within 5 days of receiving the 10 Day Notice. I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective two days after service on the Tenants.

The Tenants failed to pay the rent and utility costs that were due under the tenancy agreement.

The Landlord is granted a monetary order in the amount of \$17,415.52 comprised of \$9,600.00 in unpaid rent as listed in the table; \$7,715.52 for utility costs; and the \$100.00 fee paid by the Landlord for this hearing.

Tenants' request for compensation in the form of a rent reduction due to their allegation that the Landlord failed to maintain or repair the rental unit is dismissed with leave to reapply.

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: May 25, 2017

Residential Tenancy Branch