



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This is an application brought by the Landlord requesting an Order of Possession based on a Notice to End Tenancy for nonpayment of rent, and requesting a monetary order for alleged outstanding rent totaling \$1530.45.

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

Both parties were affirmed.

Issue(s) to be Decided

At the beginning of the conference call the parties confirmed that the tenant vacated the rental unit on April 25, 2017, and therefore possession of the rental unit is no longer an issue.

The issue I dealt with therefore is whether or not the applicant has established a monetary claim for outstanding rent, and if so in what amount.

Background and Evidence

The parties agree that this tenancy began on April 1, 2015 and ended on April 25, 2017.

The parties also agree that the monthly rent by the end of the tenancy was \$1543.50.

The landlord testified that a previous order had been issued against him requiring that he paid \$3100.00 to the tenant, and therefore the tenant was allowed to deduct that amount from the February 2017 rent, March 2017 rent, and then a small portion left for the April 2017 rent as follows:

February 2017 rent	\$1543.50
March 2017 rent	\$1543.50
Portion of April 2017 rent	\$13.00
Total	\$3100.00

The landlord further testified that, since the monetary order had been satisfied by deductions from the rent, it is his belief that the tenant was required to pay the remainder of the April 2017 rent; however she failed to do so and he therefore he believes that she presently owes \$1530.50 of the April 2017 rent.

The landlord further testified that, since the tenant was refusing to pay the remainder of the April 2017 rent she was served with a 10 day Notice to End Tenancy on April 2, 2017, however she failed to comply with that notice and did not vacate the rental unit until April 25, 2017.

The landlord is therefore requesting a monetary order for \$1530.50.

The tenant testified that, as part of the previous arbitrator's decision, in which she was awarded \$3100.00, the landlord was also ordered to remove the restrictions placed on her lighting so as to provide uninterrupted use and control of the lighting in her unit. The arbitrator further ordered that the landlord must maintain exterior pathway lighting.

The tenant further testified that the landlord did not comply with either of these orders as there were still restrictions placed on her lighting and the landlord refused to provide pathway lighting, right up to the end of the tenancy, and, in fact, in April 2017 the landlord completely cut off the power to her rental unit.

The tenant further testified that, in that previous decision the arbitrator also stated that if the landlord did not comply with these terms by January 31, 2017, she was entitled to a full rent reduction for each month that the landlord was in breach of these terms, and

therefore it is her belief that she was under no obligation to pay any rent for the months of February 2016, March 2016, and April 2016, and therefore she owes no rent whatsoever.

The tenant further testified that, it is her belief that, since she was not required to pay any rent for those months the landlord still owes her the \$3100.00 ordered in the original arbitration, which has not been paid.

The tenant therefore requests that this application be dismissed.

In response to the tenant's testimony the landlord testified that this house is an energy-efficient home and he cannot completely remove the lighting restrictions, as they are automatically controlled by the system, however he did relax the settings so that the tenants lighting would not be unreasonably interrupted. He further states that he also offered to replace all the lights with LED lights to reduce power consumption, however the tenants refuse this offer.

The landlord further testified that he did not maintain the exterior pathway lighting as it was never included in the tenancy agreement, and he believes the adjudicator made an error in issuing this order. He further stated that the tenant always had a working porch light that was on a motion sensor that would turn the light on as she approached her rental unit, but only if she had the switch on inside her suite, over which he had no control.

The landlord further testified that he did cut the electricity off to the tenants unit, but not until April 12, 2017, after the tenant had failed to comply with the ten-day Notice to End Tenancy and therefore he believes he had the right to cut off the power as she was not supposed to be in the unit any longer.

In response to the landlord's testimony the tenant testified that they never refused to allow the landlord to install LED lights, there was just never any agreement reached as to when this would be done.

Analysis

A previous arbitration hearing was held in December 22, 2016 the arbitrator issued a decision on January 20, 2017 in which the arbitrator ordered the following:

Pursuant to section 62 of the *Act*, I find that the tenant is entitled to the following Orders for the landlord to comply with the *Act* and the tenancy agreement:

1. that the landlord comply with the *Act* and the tenancy agreement by removing the restrictions placed on the tenant's lighting immediately so as to provide the tenant with uninterrupted use and control of the lighting in her unit;
2. that the landlord is prohibited from using the energy saving system in the tenant's unit effective immediately for the remainder of the tenancy;
3. that the landlord is required to maintain exterior pathway lighting, without any restrictions, which the landlord must have in place by no later than **January 31, 2017 by 1:00 p.m.**
4. that if the landlord does not comply with the above terms by **January 31, 2017 by 1:00 p.m.**, the tenant will be entitled to a full rent reduction for each month the landlord is in breach of these terms starting February 1, 2017.
5. that if the tenant becomes entitled to a full rent reduction, the landlord will be required to file an application with the Residential Tenancy Branch to cancel the rent reduction by proving that he has complied with the above terms.
6. that the landlord comply with section 27 of the *Act* in the future. Failure to do so could lead to a recommendation for an administrative penalty under the *Act*. The maximum penalty for an administrative penalty under section 94.2 of the *Act* is \$5,000.00 per day and may be imposed for each day the contravention or failure continues.

Based on the landlord's direct testimony, it is my finding that the landlord failed to comply with the above orders.

The landlord testified that he did not remove the restrictions placed on the tenants lighting, and that he did not stop using the energy saving system, he testified that he simply relaxed the settings.

Further, the landlord testified that he did not maintain exterior pathway lighting as he believed it was an error on the part of the adjudicator.

The landlord seems to believe that he did not have to comply with the orders if he disagreed with them, and, as a result, decided to completely ignore the order with regards to the exterior pathway lighting, and decided that, instead of stopping using the energy saving system, relaxing the settings on the energy saving system was sufficient.

It is my finding however that the landlord is incorrect, and by ignoring the orders he has failed to comply with the arbitrators orders, and therefore pursuant to section 4 of that order the tenant was entitled to a full rent reduction for the months of February 2017 March 2017, and April 2017. The tenant therefore owes no rent whatsoever and in fact the landlord still owes the tenant the \$3100.00 ordered from the previous hearing.

Conclusion

As stated above the tenant has already vacated the rental unit and the landlord has possession and therefore there is no need for me to make a finding on whether an Order of Possession was justified.

Pursuant to section 62 of the Residential Tenancy Residential Tenancy Act, the landlords request for a monetary order is dismissed in full, without 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: June 12, 2017

Residential Tenancy Branch