



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REMAX LITTLE OAK REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR

Introduction

This hearing convened as a result of an Application for Dispute Resolution by the Landlord for an Order of Possession and a Monetary Order for unpaid rent. The Landlord originally applied by way of Direct Request proceeding which was adjourned to a participatory hearing.

The participatory hearing occurred by teleconference on June 20, 2017 at 9:00 a.m. Only the Landlord's agent, D.L. called into the hearing. He gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

D.L. testified served the Tenants with the Notice of the Hearing and their Application on May 17, 2017 by registered mail to the rental unit. He confirmed that at the time of service the Tenants were still in occupation of the rental unit, although they failed to retrieve the registered mail packages.

Copies of the registered mail tracking numbers are included on the unpublished cover page of this my Decision.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Under the *Act* documents served this way are deemed served five days later; accordingly, I find the Tenants were duly served as of May 22, 2017 and I proceeded with the hearing in their absence.

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

At the outset of the hearing, the landlord testified that the Tenants vacated the rental since filing this application. As a result, the Landlord requested to withdraw their request for an Order of Possession as the Tenants had already given up possession of the rental unit.

Issue to be Decided

1. Is the Landlord entitled to a Monetary Order for unpaid rent and utilities?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement confirming the tenancy began October 1, 2015. Monthly rent was payable in the amount of \$875.00 in addition to 25% of the utilities (as provided for in clause 3(b) of the agreement). A security deposit in the amount of \$437.50 was paid on September 30, 2015. Pursuant to the addendum paragraph 2, the Tenants also agreed to pay a late fee of \$25.00.

The Tenants failed to pay rent for the month of March 2017 and April 2017. The Landlord issued a 10 day Notice to End Tenancy for non-payment of rent on April 12, 2017 indicating the amount of \$1,991.13 was due as of April 1, 2017 (the "Notice").

D.L. testified that this sum included the following:

Rent for March 2017	\$932.00
Late fee for March 2017	\$25.00
Rent for April 2017	\$932.00
Late fee for April 2017	\$25.00
Outstanding gas utility for March 2017	\$60.66
Outstanding hydro utility for March 2017	\$66.77

TOTAL	\$2,041.43
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Although the above calculation does not add up to the amount claimed on the Notice, I find, based on the Tenant Leger provided in evidence by the Landlord, that the sum of \$1,991.13 was owed as of the date of the Notice. It appears as though the Landlord did not include the late fee for March 2017 and April 2017, and failed to consider that on February 20, 2017 the Tenants had a 30 cent credit when calculating the amounts owing on the Notice.

Based on the testimony of D.L., I find that the Tenants were served with the Notice on April 12, 2017 by leaving the Notice with, D.W., an adult who lived with the Tenants. D.L. testified that he was certain D.W. lived with the Tenants as all of his things were there and his parents came to the rental unit after the tenancy ended to retrieve his items. Further D.L. stated that in email communication with D.W.'s parents, they confirmed D.W. lived at the rental unit.

Section 89 of the *Act* provides as follows:

89 (2) An application by a landlord under section 55 [*order of possession for the landlord*], 56 [*application for order ending tenancy early*] or 56.1 [*order of possession: tenancy frustrated*] must be given to the tenant in one of the following ways:

(c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant

Accordingly, I find that the Tenants were served with the Notice as of April 12, 2017.

The Notice informed the Tenants that the Notice would be cancelled if the rent was paid within five days of service, namely, April 17, 2017. The Notice also explains the Tenants had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution. As April 17, 2017 was Easter Monday, the Tenants had until April 18, 2017 to file for dispute resolution.

D.L. confirmed the Tenants failed to pay the outstanding rent and failed to dispute the notice.

D.L. also testified that the Tenants caused considerable damage to the rental unit as a result of a physical altercation between C.S. and a roommate, including breaking windows, doors, and blinds as well as blood stains on the carpet. D.L. confirmed that as a result of the excessive damage to the doors and windows it was necessary to

board up the windows and change the locks to the rental unit. The Landlord did not make a claim for monetary compensation for damage in the within hearing.

D.L. stated that due to the damage to the rental unit it was not re-rented until June 15, 2017. The Landlord did not make a claim for loss of rent for May or June 2017 in the within application.

Analysis

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

The Tenants have not paid the outstanding rent and did not apply to dispute the Notice and are therefore conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

Under section 26 of the *Act*, the Tenants must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the *Act*, unless the Tenants have some authority under the *Act* to not pay rent. In this situation the Tenants had no authority under the *Act* to not pay rent. I find the Landlord is therefore entitled to recovery of the unpaid rent in the amount of \$1,864.00.

I find that the Tenants were responsible for paying 25% of the electrical and gas utility and failed to do so. I therefore find the Landlord is entitled to recovery of the unpaid utilities.

The Landlord is granted Monetary Compensation in the amount of **\$1,991.13** for the following:

Rent for March 2017	\$932.00
Rent for April 2017	\$932.00
Outstanding gas utility for March 2017	\$60.66
Outstanding hydro utility for March 2017	\$66.77
TOTAL	\$1,911.43
<i>Less credit</i>	.30
TOTAL AWARDED	\$1,991.13

Conclusion

I find that the Landlord has established a total monetary claim of \$1,991.13 comprised of unpaid rent and utilities for March and April 2017. I therefore grant the Landlord a Monetary Order under section 67 for this amount. This Order may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

The Landlord is at liberty to reapply for further monetary compensation for the unpaid late fees, damage to the rental unit, loss of rent as well as authority to retain the Tenants' security deposit.

This decision is final and binding on the parties, except as 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: June 20, 2017

Residential Tenancy Branch