



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNR, ERP, RP, MNDC, MNSD, OLC, FF

Introduction:

A hearing was convened under the *Residential Tenancy Act* (the “Act”) to deal with cross-applications based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 2, 2017 (the “10 Day Notice”). The landlords applied for an order of possession and a monetary order for unpaid rent and utilities and recovery of the application filing fee, but withdrew their request for an order of possession at the hearing as it was no longer required.

The tenants applied for an order cancelling the 10 Day Notice and for orders requiring the landlords to make repairs and comply with the Act, for compensation for breach of the Act, regulation or tenancy agreement, and for return of the security deposit.

At the outset of the hearing the individual landlord advised that the tenants have vacated the rental property and amended her claim for damages to the rental unit. Residential Tenancy Branch Rules of Procedure allow me to accept an amendment where it concerns something that the tenant can reasonably anticipate, and I accept the landlords’ amendment in the circumstances.

The individual landlord attended the hearing and was given a full opportunity to be heard, to present documentary evidence and to make submissions.

The tenants did not attend at their own hearing. Service of the landlords’ application and notice of hearing was therefore considered. The individual landlord testified that she served both tenants separately by registered mail posted on July 13, 2017 to the rental unit address, and included Canada Post receipts in her evidence. I accept that the tenants have been duly served in accordance with the Act.

As the tenants did not attend at the hearing of their own application, they have not substantiated their claims, and I therefore dismiss their application in its entirety without leave to reapply. As a result, the only issues to be decided are those arising from the landlords' application and amendment.

Issues to be Decided

Are the landlords entitled to compensation?

Are the landlords entitled to recover the application filing fee?

Background and Evidence

According to the written tenancy agreement in evidence and the individual landlord's testimony, this tenancy began February 1, 2017 as a month to month tenancy with rent of \$1,600.00 payable on the first day of each month. A security deposit of \$800.00 was paid on January 29, 2017 and remains with the landlord. Utilities are not included in the rent.

The landlord testified that she served the tenants with the 10 Day Notice on July 3, 2017 personally. The 10 Day Notice indicates \$242.51 outstanding in utilities.

The landlord further testified that tenants sent her a text message on July 17 stating that the house was empty and "good bye." A copy of that message was in evidence. The tenants did not leave a forwarding address.

The landlord said that the tenants owe \$1,600.00 in rent, inclusive of July, and provided an accounting of monies received and outstanding from the tenants.

The landlord also testified that the tenants still owe for the utilities claimed on the 10 Day Notice, as well as for other amounts, for the total set out below. Copies of the bills were in evidence.

The individual landlord testified as well that the unit was left dirty and several of the window screens were damaged. She provided detailed invoices for the cleaning, repair, and screen replacement. She also said that the tenant had started to dismantle the back deck without her consent and provided receipts for the cost of repairing and repainting the deck.

In total the landlords claim as follows:

Outstanding rent	\$1,600.00
Utilities (hydro, natural gas, water, sewage, garbage)	\$857.28
Cleaning and repairs	\$765.00
Window screen replacement	\$162.40
Supplies and paint for deck repair	\$141.17

Analysis

The tenants were served with the 10 Day Notice on July 3, 2017 and did not pay the amount owing in full within five days. Although they applied to dispute the 10 Day Notice within five days of receipt, they have not attended at this hearing and have therefore not made any case for their application to cancel the 10 Day Notice. Accordingly, I find that this tenancy ended on **July 13, 2017**, the effective date of the 10 Day Notice.

The landlords have indicated that the tenants have vacated and that an order of possession is not required.

Sections 7 and 67 of the Act establish that a tenant who does not comply with the Act, Regulation or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

The individual landlord provided affirmed and undisputed testimony and undisputed documentary evidence of the amounts claimed in unpaid rent, outstanding utilities, cleaning and repairs. I accept the landlords' claims in their entirety.

As the landlords were successful in this application, I find that they are also entitled to recover the \$100.00 filing fee.

The landlords continue to hold the tenants' security deposit of \$800.00. Over the period of this tenancy, no interest is payable on the deposit. In accordance with the offsetting provisions of section 72 of the Act, I authorize and order the landlords to retain the security deposit in partial satisfaction of the monetary claim.

Conclusion

The tenants' application is dismissed in its entirety and without leave to reapply.

The landlords' 10 Day Notice is upheld.

I issue a monetary order for the landlords in the following terms, which allows the landlords to obtain a monetary award for the amounts substantiated as well as the filing fee, and to retain the security deposit for this tenancy:

Outstanding rent	\$1,600.00
Utilities (hydro, natural gas, water, sewage, garbage)	\$857.28
Cleaning and repairs	\$765.00
Window screen repairs	\$162.40
Supplies and paint for deck repair	\$141.17
Filing fee	\$100.00
(Less security deposit)	(\$800.00)
TOTAL	\$2,825.85

The tenants must be served with this order as soon as possible. Should the tenants fail to comply with this order, it may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Dated: September 19, 2017

Residential Tenancy Branch