



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, O
 OPR, MNR

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Tenants under the *Residential Tenancy Act* (the “Act”), seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”), an other matters relating to a pet damage deposit.

This hearing also dealt with a cross-application filed by the Landlord under the *Act*, seeking a Monetary Order in the amount of \$1,250.00 for unpaid rent and Utilities and an Order of Possession.

The hearing was convened by telephone conference call and was attended by the Landlord and one of the Tenants, both of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. However, I refer only to the relevant facts and issues in this decision. At the request of the Tenant, a copy of the decision and any Order issued in favor of the Tenants will be e-mailed to them at the e-mail address provided in the hearing. At the request of the Landlord, a copy of the decision and any Order issued in favor of the Landlord will be e-mailed to them at the e-mail address provided in the hearing.

Preliminary Matters

On October 11, 2017, the Residential Tenancy Branch (the “Branch”) received an Amendment to an Application for Dispute Resolution (the “Amendment”) from the Tenants stating that a new 10 Day Notice had been served on October 6, 2017, which they also wished to dispute. At the outset of the hearing the parties agreed that the Tenants vacated the rental unit on October 31, 2017, and the Landlord stated that they

no longer require an Order of Possession. As a result, the Tenant withdrew their Application and Amendment seeking to cancel one or more Notices to End Tenancy. The Tenant also withdrew their Application relating to a pet damage deposit. In response the Landlord withdrew their Application for an Order of Possession and the hearing proceeded based on the remaining Application by the Landlord for a Monetary Order for Unpaid Rent and Utilities.

On November 10, 2017, the Branch received an Amendment from the Landlord increasing the amount of the monetary claim to \$1,935.80. The Landlord testified that the Amendment and related additional evidence were sent to the Tenants by registered mail on November 10, 2017, and the Tenant confirmed receipt. The Application was therefore amended pursuant to the *Act* and the Rules of Procedure.

The Landlord also indicated that they had submitted documentary evidence which was not before me for consideration. On further investigation, it was determined that the documentary evidence referred to by the Landlord was submitted to the Branch in relation to another file and another hearing. As a result, the evidence was not before me for consideration in relation to this matter and I advised the Landlord that it would not be considered in relation to this matter. However, I advised the Landlord that I would accept for consideration, any testimony they wished to provide in the hearing in relation to these documents.

Issue(s) to be Decided

Is the Landlord entitled to a Monetary Order for unpaid rent or utilities pursuant to section 67 of the *Act*?

Background and Evidence

The parties agreed that the tenancy was entered into on a month to month basis, a security deposit in the amount of \$650.00 was paid by the Tenants, and that rent in the amount of \$1,250.00 was due on the first day of each month. However, a written tenancy agreement was not before me for consideration and the parties disagreed about whether utilities were included in the cost of rent.

The Landlord testified that the agreement at the start of the tenancy was for the utility bills to be split 55/45 between the Tenants as the Landlord, who resides in a separate unit of the house. The Landlord testified that the \$485.80 noted in the Direct Request worksheet is the correct amount of outstanding utilities owed by the Tenants; however,

he acknowledged that the Tenants were only ever advised to pay \$355.88. As a result, the Landlord testified that he is only seeking \$355.88 in outstanding utilities. The Landlord stated that he has text messages showing that the Tenants agreed to split the utility bills as outlined above, and e-mails confirming that the Tenants were sent copies of the utility bills and advised to pay. The Landlord testified that his lawyer also sent copies of the utility bills to the Tenants, along with a letter demanding that the Tenants pay the required amounts. No documentary evidence was before me in support of this testimony.

The Tenant denied that she or her husband agreed to split the utilities and testified that it was her understanding that the utilities were included in the rental price. The Tenant also stated that they never paid or agreed to pay any utilities, nor were they ever sent copies of any utility bills.

The Landlord testified that the Tenants also owe \$1,450.00 in outstanding rent; \$50.00 for July, \$100.00 for August, \$1,250.00 for September, and \$50.00 for October, 2017. The Landlord testified that he has e-mail transfer records regarding the rent paid by the Tenants but these records were not before me for consideration. In lieu of the bank records, the Landlord provided detailed testimony regarding the exact dates, amounts, and methods of rent paid by the Tenants for July, 2017 – October, 2017, as follows:

- October 1, 2017 – e-transfer of \$1,200.00
- August 1, 2017 – e-transfer \$625.00
- August 15, 2017 – e-transfer \$525.00
- July 5, 2017 – e-transfer \$500.00
- July 18, 2017 – e-transfer \$300.00
- July 28, 2017 – e-transfer \$400.00

The Tenant acknowledged that rent was not paid for September and that \$50.00 remained outstanding for October, 2017. However, the Tenant denied that any rent was owed for July or August and testified that rent for those months had been paid in full with cash. The Tenant did not submit rent receipts and was unable to provide further details about the exact payment dates or amounts as she stated that the rent was paid by her husband who was not present in the hearing.

The Landlord requested that he be allowed to retain the \$650.00 security deposit paid by the Tenants to offset the above noted outstanding rent and utility amounts and that he be issued a Monetary Order for the remaining balance owed.

Analysis

The parties agreed that rent in the amount of \$1,250.00 was due on the first day of each month and that \$1,300.00 in rent remains outstanding for September and October, 2017. Although the parties disagreed about whether or not \$150.00 in rent remains outstanding for July and August 2017, for the following reasons, I find that it was. First, although the Tenant testified that the rent was paid for July and August, she could not provide any details about the dates or amounts of these payments as she stated they were made by her spouse, who was not present in the hearing. Further to this, the Tenant did not submit any documentary evidence to corroborate her testimony that these payments were made. Contrary to this, the Landlord provided detailed testimony regarding the exact dates, amounts, and methods of rent payments. As a result, I find that the Tenants owe \$1,450.00 in outstanding rent; \$50.00 for October 2017, \$1250.00 for September 2017, \$100.00 for August 2017 and \$50.00 for July 2017.

No written tenancy agreement was before me for consideration and the parties disagreed about whether utilities were included in the cost of rent. Although the Landlord provided substantial testimony in support of his position that utilities were not included in rent, no documentary evidence was before me for consideration. In contrast the Tenant testified that utilities were included in the cost of rent and denied that they or their spouse, who is also a Tenant, received utility demand letters or copies of the utility bills.

Based on the foregoing, I find that the Landlord has failed to establish, on a balance of probabilities, that utilities were not included in the cost of rent or that the Tenants were required under the Act to pay the Landlord the amounts claimed for utilities. As a result, the Landlord's Application for the cost of utilities is dismissed without leave to reapply.

Based on my above findings, the Landlord is entitled to \$1,450.00 in monetary compensation for unpaid rent. Pursuant to section 72 of the *Act*, the Landlord is entitled to retain, in full, the \$650.00 security deposit paid by the Tenants in partial recovery of these costs. The Landlord is also entitled to a Monetary Order in the amount of \$800.00 for the balance of the outstanding rent owed.

Conclusion

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$800.00. The Landlord is provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible. Should the Tenants fail to

comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: December 14, 2017

Residential Tenancy Branch