



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL OPUM-DR

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking an Order of Possession and a monetary order for unpaid rent or utilities and to recover the filing fee from the tenants for the cost of the application.

The landlord attended the hearing with legal counsel, gave affirmed testimony, and provided evidentiary material in advance of the hearing. However, the line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and no one for the tenants joined the call. The landlord testified that the tenants were individually served with the Landlord's Application for Dispute Resolution, notice of this hearing and evidentiary material by registered mail on December 27, 2017 by the landlord's counsel. The landlord has provided Canada Post tracking print-outs that confirm that testimony, and I am satisfied that both tenants have been served in accordance with the *Residential Tenancy Act*.

Issue(s) to be Decided

- Has the landlord established that the 10 Day Notices to End Tenancy for Unpaid Rent or Utilities were served in accordance with the *Residential Tenancy Act*?
- Has the landlord established a monetary claim as against the tenants for unpaid rent or utilities?

Background and Evidence

The landlord testified that this month-to-month tenancy began on August 1, 2017 and the tenants still reside in the rental unit. Rent in the amount of \$1,050.00 per month is payable on the 1st day of each month. The rental unit is an apartment within an apartment complex, and the tenants had previously occupied another unit of the landlord, and the \$405.00 security deposit paid on October 5, 2015 was transferred to this tenancy, and is still held in trust by the landlord. A copy of the tenancy agreement has been provided for this hearing.

The landlord further testified that the tenants are currently in arrears of rent the sum of \$3,150.00 for the months of December, 2017 and January and February, 2018. On December 1, 2017 the landlord's daughter served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the door of the rental unit. A Proof of Service document has been provided for this hearing which is signed by the landlord's daughter and a witness. Also provided is the first page only of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. It is dated December 1, 2017 and contains an effective date of vacancy of December 12, 2017 for unpaid rent in the amount of \$1,050.00 that was due on December 1, 2017. The tenants have not paid any rent since it was issued and have not served the landlord with an Application for Dispute Resolution disputing the notice.

The landlord's counsel advised that the second page of the notice is on the flip side of the first page, and wasn't scanned on both sides when providing evidence for this hearing. The landlord was given the opportunity to send to me by facsimile a copy of what exactly was served on the tenants. The landlord has now provided a copy of 2 pages of the 2-page notice.

The landlord also testified that tenants apply to the City for hydro however if the tenants don't pay the hydro bill, the amount is applied to the owner's property taxes. On November 20, 2017 the tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the door of the rental unit. A copy of the first page only has been provided for this hearing and it is dated November 20, 2017 and contains an effective date of vacancy of November 30, 2017 for unpaid utilities in the amount of \$96.76 following written demand on September 5, 2017. The tenants paid the utilities in January, 2018, but the landlord has learned that the tenants now owe \$145.47 for hydro.

Analysis

Where a tenant is served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenant has 5 days to pay the rent or utilities in full or dispute it by filing and serving the landlord with an Application for Dispute Resolution. If the tenant does neither, the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit within 10 days after service of the notice.

In this case, I accept the testimony of the landlord that the tenants were served with 2 such notices and neither tenant has served the landlord with an Application for Dispute Resolution, and I have no such application before me. The tenants paid the utilities late, and have not paid any of the rent, and have fallen further into arrears. I am satisfied that the tenants are conclusively presumed to have accepted the end of the tenancy and the landlord is entitled to an Order of Possession. Since the effective date of vacancy of both notices has passed, I grant the Order of Possession on 2 days notice to the tenants.

I am also satisfied in the evidence before me that the tenants are in arrears of rent the sum of \$1,050.00 for each of the months of December, 2017 and January and February, 2018, for a total of \$3,150.00.

The landlord has provided a copy of the utility bill that was the subject of the first 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, however testified that the tenants paid it in January, 2018. Another bill is owed, but a copy has not been provided for this hearing. Since the tenancy has not yet ended, there may be additional utilities owed at the end of the tenancy, and I dismiss the landlord's application for unpaid utilities with leave to reapply.

Since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the \$100.00 filing fee.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenants.

I further grant a monetary order in favour of the landlord as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$3,250.00.

The landlord's application for a monetary order for unpaid utilities is hereby dismissed with leave to reapply.

This order is final and binding and may be enforced.

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: February 16, 2018

Residential Tenancy Branch