



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FFT
 MNRL-S, OPU, FFL

Introduction

This teleconference hearing was scheduled in response to applications by both parties under the *Residential Tenancy Act* (the “Act”). The Tenants applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”). The Landlord applied for an Order of Possession based on a 10 Day Notice and for a Monetary Order for unpaid rent and/or utilities. Both parties also applied for the recovery of the filing fee paid for the Application for Dispute Resolution.

The Landlord and an agent for the Landlord (the “Landlord”) were present for the teleconference hearing while no one called in for the Tenants during the approximately 24-minute hearing duration. The Landlord and agent were affirmed to be truthful in their testimony. They stated that they sent the Tenants the Notice of Dispute Resolution Proceeding package for their application by registered mail and provided a copy of their evidence to the Tenants by posting it on their door. As such, I find that the Tenants were duly served with the Notice of Dispute Resolution Proceeding package and the Landlord’s evidence in accordance with Sections 88 and 89 of the *Act*.

The Landlord stated that they did not received the Notice of Dispute Resolution Proceeding package regarding the Tenants’ application and also did not receive any evidence from the Tenants.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

Should the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities be cancelled?

If the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities is upheld, is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to a Monetary Order for unpaid rent and/or utilities?

Should either party be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The Landlord provided undisputed testimony regarding the tenancy. The tenancy began on June 1, 2018. The rental unit is a carriage house on the Landlord's property. Monthly rent of \$1,850.00 was due on the first day of each month. A security deposit of \$900.00 was paid at the outset of the tenancy and the Landlord confirmed that they are still retaining the deposit. The tenancy agreement was submitted into evidence and confirms the tenancy details as stated by the Landlord. They testified that the Tenants moved out on or around December 3, 2018.

The Landlord also testified that the Tenants were responsible for 100% of the electricity bills for the rental unit. The tenancy agreement addendum submitted into evidence states that the Tenants are responsible for electricity and gas for the rental unit. The addendum was signed on May 14, 2018.

As the Tenants have moved out, the Landlord confirmed that they have possession of the rental unit back and therefore are no longer seeking an Order of Possession.

On November 2, 2018 the Landlord served the Tenants with a 10 Day Notice by posting it on their door. The 10 Day Notice was submitted into evidence and states that \$3,700.00 was not paid as due on November 1, 2018. The effective end of tenancy date of the 10 Day Notice was stated as November 12, 2018.

The Landlord testified that they did not receive any amount towards the rent owing and that the Tenants did not pay rent for October, November or December 2018. At

\$1,850.00 per month, the Landlord stated that the total amount of rent owing is \$5,550.00

The Landlord also claimed \$134.58 for an unpaid electricity bill and \$300.00 as an estimate of the upcoming utility bill. However, the Landlord stated that they have since received the electricity bill dated December 3, 2018 in the amount of \$310.15. This was not submitted into evidence due to not receiving the bill until shortly before the hearing. The electricity bill dated October 2, 2018 in the amount of \$134.58 was included in the Landlord's evidence.

The Landlord also submitted an electricity bill dated August 2, 2018 in the amount of \$176.26. They stated that they did not claim this amount as there was an agreement during the tenancy that this would not be charged due to an issue that occurred with the washing machine and dryer. However, the Landlord requested at the hearing that this amount be considered as compensation as well.

The Landlord provided testimony that the utility bills were kept in the Landlord's name and when the bill was received, they would let the Tenants know how much they owed. They stated that the Tenants never paid them money for the utilities.

The Landlord also included some text messages as evidence which they stated show communication with the Tenant regarding rent payments. They stated that the Tenant did not pay the rent on time at any point during the tenancy.

Analysis

The Tenants filed an application to dispute the 10 Day Notice but did not attend the hearing. Rule 7.3 of the *Rules of Procedure* states that if a party does not attend the hearing, their application may be dismissed. I find that the Tenants were aware of the hearing as it was scheduled based on their application as well as the Landlord's and they were served with the Notice of Dispute Resolution Proceeding package regarding the Landlord's application. As such, the Tenants' application is dismissed, without leave to reapply.

Section 55(1) of the *Act* states that when a tenant's application to dispute a notice to end tenancy is dismissed, the landlord must be granted an Order of Possession. However, I accept the Landlord's testimony that the Tenants have moved out and that

they have possession of the rental unit back. Therefore, I do not find it necessary to issue an Order of Possession.

The Landlord has applied for unpaid rent for October, November and December 2018 in the amount of \$5,550.00. I accept the undisputed testimony of the Landlord that no amount of rent was paid towards the rent owing for these 3 months. Section 26 of the *Act* states that rent must be paid when it is due. I accept the tenancy agreement as evidence that rent in the amount of \$1,850.00 was payable on the first of each month. Therefore, I find that the Landlord experienced a loss in the amount of \$5,550.00 and I award this amount to the Landlord, pursuant to Section 67 of the *Act*.

As for the Landlord's claim for utilities, I find that the signed tenancy agreement addendum states that the Tenants are responsible for the electricity bill. Although the addendum states that the Tenants are to put this utility in their own name, I accept the testimony of the Landlord that they decided to keep it in their name and tell the Tenant what the bill amount was when due. This was also demonstrated on the bills submitted into evidence that separate the amounts owing for the main home and the separate rental unit.

The Landlord has claimed \$134.58 from a bill dated October 2, 2018 which was submitted into evidence. The bill shows that an amount of \$134.58 was owing for the rental unit. As such, I find that the Landlord is entitled to compensation in this amount.

Although the Landlord requested \$310.15 for a utility bill for December 2018, as this was not submitted into evidence I am not satisfied as to the amount owing or the time period of the bill. As such, I find that the Landlord did not establish the value of the loss and I decline to award this amount. Both parties are at liberty to file a new Application for Dispute Resolution should they believe there are any outstanding claims from this tenancy.

As for the August 2, 2018 utility bill for \$176.26, I also decline to award this amount. The Tenants were not aware that the Landlord was seeking this amount due to it not being requested on the Landlord's Application and they have a right to know the claims against them. The Landlord also testified as to a prior agreement with the Tenants that it would not be charged, so I do not find that the Landlord established that this amount is owed from the Tenants.

As the Landlord was successful in their application, I award the recovery of the filing fee in the amount of \$100.00, pursuant to Section 72 of the *Act*.

As the Landlord is still in possession of the security deposit, they may retain the deposit towards the total amount owing. The Landlord is granted a Monetary Order in the amount outlined below:

October 2018 rent	\$1,850.00
November 2018 rent	\$1,850.00
December 2018 rent	\$1,850.00
Electricity bill October 2, 2018	\$134.58
Filing fee	\$100.00
<i>Less security deposit</i>	<i>(\$900.00)</i>
Total owing to Landlord	\$4,884.58

Conclusion

The Tenants' Application for Dispute Resolution is dismissed, without leave to reapply.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a **Monetary Order** in the amount of **\$4,884.58** for rent owed for October, November and December 2018, an unpaid utility bill, and the recovery of the filing fee. 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 21, 2018

Residential Tenancy Branch