



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CHHR DEVELOPMENT LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPM, FFL

Introduction

On December 10, 2018, the Landlord submitted an Application for Dispute Resolution requesting an order of possession for the rental unit based on a Mutual Agreement to End Tenancy. On January 4, 2019, the Landlord amended the Application to include a monetary claim of \$2,469.54 for unpaid rent and utilities.

The matter was set for a conference call hearing. Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Landlord testified that the amended application for compensation was served to both Tenants. The Landlord testified that it was served to the Tenant Mr. D.Q. on January 4, 2019, using registered mail sent to the dispute address.

I find that the amended application was served to the Tenant in accordance with sections 89 and 90 of the Act. The Tenant is deemed to have received the amended application on January 9, 2019, the fifth day after it was mailed.

Issues to be Decided

- Did the parties enter into a mutual agreement to end the tenancy?
- Is the Landlord entitled to an order of possession based on a mutual agreement to end the tenancy?
- Is the Landlord entitled to a monetary order for unpaid rent and utilities?

Background and Evidence

The Landlord and Tenant testified that the tenancy began on October 1, 2018, as a one year fixed term tenancy. Rent in the amount of is \$1,950.00 was due by the first day of each month. The Tenants paid the Landlord a security deposit of \$975.000.

The Landlord testified that the parties signed a mutual agreement that the tenancy will end on December 15, 2018. The Landlord has provided documentary evidence of a Mutual Agreement to End a Tenancy dated December 3, 2018, which is signed by the Landlord and the Tenant.

The Landlord testified that he was concerned that the Tenants' would renege on the agreement, so he applied for an order of possession prior to the effective date of the agreement.

The Landlord testified that the Tenant Mr. D.Q. failed to move out of the rental unit on December 15, 2018, the effective date of the mutual agreement to end tenancy. The Landlord testified that it appears the male Tenant, Mr. D.Q. moved out of the unit on January 21, 2019; the night before this hearing. The Landlord still wants an order of possession for the rental unit.

The Landlord testified that rent for the month of January 2019, was not received. The Landlord is seeking compensation in the amount of \$1,950.00 for a loss of rent.

The Landlord testified that the tenancy agreement requires the Tenants to pay 1/3 of the cost for gas and hydro utilities.

The Landlord is seeking the amount of \$118.87 for unpaid gas utilities; and \$400.67 for unpaid hydro utility costs.

In reply, the Tenant acknowledged that the Tenants entered into a mutual agreement to end the tenancy. The Tenant, Ms. R.M. testified that she moved out of the rental unit prior to the effective date of the mutual agreement.

The Tenant, Ms. R.M. acknowledged that the tenancy agreement requires the Tenants to pay 1/3 of the costs for gas and hydro utilities. The Tenant acknowledged responsibility for the utility amounts being claimed by the Landlord.

Analysis

Section 44 of the Act states that a tenancy ends if the Landlord and Tenant agree in writing to end the tenancy.

Section 55(2) of the Act states that a Landlord may request an order of possession for a rental unit when the Landlord and Tenant have agreed in writing that the tenancy is ended.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenants signed a Mutual Agreement to End the Tenancy and agreed to vacate the rental unit by 1:00 pm on December 15, 2018. I find that the Mutual Agreement to End a Tenancy is a valid agreement and is enforceable.

I find that the Tenant failed to abide by the Agreement and Mr. D.Q. remained living in the rental unit until January 21, 2019.

I find that the Landlord is entitled to an order of possession effective two days after service on the Tenants. This order may be filed in the Supreme Court and enforced as an order of that Court.

I find that the Landlord suffered a loss of rent for the month of January 2019. I grant the Landlord the amount of \$1,950.00.

I find that the Tenants failed to pay their 1/3 share of gas and hydro utilities. I grant the Landlord the amount of \$519.54.

As the Tenant did not move out of the rental unit in compliance with the Mutual Agreement to End Tenancy, I find that the Tenants are responsible to repay the Landlord the amount of \$100.00 for the cost of the Application.

The Landlord has established a monetary claim in the amount of \$2,569.54 comprised of a loss of rent for January 2019; unpaid utility costs; and the filing fee. I grant the Landlord a monetary order in the amount of \$2,569.54. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

Conclusion

The Landlord is granted an order of possession effective two days after service on the Tenant.

The Landlord is granted a monetary order in the amount of \$2,569.54.

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: January 22, 2019

Residential Tenancy Branch