



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

AMENDED JULY 4, 2019

Dispute Codes OPRM-DR
 CNR ERP RP FFT
 OPRM-DR FFL

Introduction

This hearing was convened by way of conference call concerning 3 Applications for Dispute Resolution that have been joined to be heard together.

The first is an application made by the landlord as against 1 tenant seeking an Order of Possession and a monetary order for unpaid rent or utilities by way of the Direct Request process.

The second is an application made by 2 tenants seeking an order cancelling a notice to end the tenancy for unpaid rent or utilities; an order that the landlord make emergency repairs for health or safety reasons; an order that the landlord make repairs to the unit, site or property; and to recover the filing fee from the landlord for the cost of the application.

The third is an application made by the landlord as against 2 or more tenants, which is unclear, seeking an Order of Possession and a monetary order for unpaid rent or utilities and to recover the filing fee from the tenants, by way of the Direct Request process.

The landlord is named the same in all 3 applications however the names of the tenants vary.

The landlord was represented at the hearing by an agent who gave affirmed testimony. Both tenants also attended the hearing, one of whom gave affirmed testimony. The parties were given the opportunity to question each other and give submissions.

During the course of the hearing, the landlord's agent indicated that the landlord has already been successful in obtaining an Order of Possession, and a copy has been provided for this hearing. ~~Therefore, I dismiss the landlord's application for an Order of Possession and the tenants' application for an order cancelling a notice to end the tenancy. Since the tenancy is ending, I also dismiss the balance of the tenants' application.~~ The Order of Possession contains a different address than that indicated in the tenancy agreement.

No issues were raised with respect to service or delivery of the tenants' evidentiary material. However, the tenant had indicated that some of the evidentiary material provided for this hearing by the landlord was not provided to the tenants. He has a lot of paper and is not certain which were served by the landlord, but does not have copies of any utility bills or bank statements. The landlord's agent is not aware of what evidence was served by the landlord.

The first application filed by the landlord contains a 7-page tenancy agreement; a blank deposit document; the first page only of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 5, 2019; a 2-page proof of service document; a Direct Request Worksheet; a water bill receipt; and a letter of authorization for the landlord's agent. The water bill and the Direct Request Worksheet were filed by the landlord on April 6, 2019, and given that the tenant testified that no utility bills have been received, I decline to consider the evidence of the landlord that was filed on April 6, 2019.

The second application filed by the landlord contains the same evidence, in addition to 2 bank statements of the landlord, and all evidence was filed on May 15, 2019. Given that the landlord's agent is not able to provide any information about what the landlord provided to the tenants, I decline to consider any of that evidence.

I have also reviewed the Decision of the director with respect to the issuance of the Order of Possession, a copy of which has been provided by the tenants. It is dated April 1, 2019 and states that the landlord had provided a copy of a tenancy agreement for a tenancy to begin on November 1, 2017 and rent in the amount of \$1,550.00 due on the first day of each month. The Adjudicator found that the tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on March 5, 2019 and failed to pay rent or dispute the Notice within 5 days. It also states that the landlord had increased rent contrary to the *Act* and the Adjudicator was not able to determine what exactly was owed for rent, and the application for a monetary order for unpaid rent was dismissed with leave to reapply, however the landlord was awarded recovery of the \$100.00 filing fee.

I have also reviewed the tenancy agreement, and I amend the Style of Cause to reflect the names of the parties as they appear on the tenancy agreement, and the frontal page of this Decision reflects that amendment, including the address of the rental unit.

Issue(s) to be Decided

The issue remaining to be decided is:

- has the landlord established a monetary claim as against the tenants for unpaid rent or utilities?
- is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent or utilities?

Background and Evidence

The landlord's agent testified that this fixed-term tenancy began on November 1, 2017 and expires on September 1, 2019. The tenants still live in the rental unit, which is a single family dwelling. Rent in the amount of \$1,550.00 per month is payable on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$1,550.00 which is still held in trust by the landlord, and no pet damage deposit was collected. A copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord's agent further testified that rent is usually paid by the tenants by depositing the money into the landlord's bank account.

The tenants paid \$1,158.73 in October, 2018, leaving a balance of \$391.27 outstanding. In November, 2018 the tenants paid \$1,625.00, but the landlord has since learned that raising the rent was not permissible, so the tenants should be credited \$75.00 for that month. Rent in December, 2018 was paid in 2 installments totalling \$1,550.00. The tenants paid \$1,450.00 in January, 2019, leaving a balance outstanding for that month in the amount of \$100.00. The tenants only paid \$400.00 on February 4, 2019, however the landlord's Monetary Order Worksheet shows that the tenants paid \$1,330.00, leaving a balance outstanding of \$220.00 for February, 2019; that is not indicated on the landlord's bank statement. No rent has been paid for March, April or May, 2019.

The tenancy agreement requires that the tenants pay the utilities, and on March 28, 2019 the landlord paid \$775.91 as well as interest for the water/sewer/garbage bill, which is billed quarterly. The landlord claims \$785.62 as against the tenants.

There were improvements made by the tenants that were not their responsibility, however the tenants have not provided the landlord with any receipts for the work that they did.

The landlord's agent also testified that the tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities after the Order of Possession was granted. A copy was provided for the hearing and it is dated May 3, 2019 and contains an effective date of vacancy of May 13, 2019 for unpaid rent in the amount of \$4,870.00 that was due on May 3, 2019 and unpaid utilities in the amount of \$1,537.63 following a written demand on May 3, 2019.

The tenant testified that the landlord never gave the tenants a utility bill, and the tenant disputes the amounts that the landlord has claimed.

The tenant further testified that the furnace was broken all winter. The natural gas bill was fine, but the tenants had to heat with space heaters and the hydro bills have gone through the roof. Fortis looked at it and said a technician was necessary, so the tenants called a technician who said parts were expensive and the furnace should be replaced.

The tenants have upgraded the property with the landlord's permission, such as fencing, hardwood floors, a new toilet and painting, for which none was reimbursed by the landlord. The tenant and the landlord made a handshake deal. Copies of text messages exchanged between the parties have also been provided for this hearing.

The tenants have provided copies of 2 different 10 Day Notices to End Tenancy for Unpaid Rent or Utilities as evidence for this hearing. The first is dated January 15, 2019 and contains an effective date of vacancy of January 25, 2019 for unpaid rent in the amount of \$1,625.00 that was due on January 1, 2019 and unpaid utilities in the amount of \$700.00 following written demand on December 12, 2018. The second is dated March 5, 2019 and contains an effective date of vacancy of March 15, 2019 for unpaid rent in the amount of \$1,625.00 that was due on March 1, 2019 and unpaid utilities in the amount of \$761.72 following written demand on November 15, 2018.

Analysis

Firstly, a landlord must not collect more than half a month's rent as a security deposit and a tenant may reduce rent by the amount of overpayment.

The tenant disputed the amount of rent owed and reflected on work that the tenants have done on a handshake deal with the landlord to improve the rental unit. A verbal

agreement can be binding, but it's hard to prove. The landlord's agent testified that no receipts have been provided to the landlord for costs, and there is no evidence of work for any specific amount to be deducted from the rent. The tenants do not deny that no rent has been paid for April or May, 2019, but referred to lack of heat over the winter. The law requires that a tenant pay rent even if the landlord fails to comply with the *Act* or the tenancy agreement.

The landlord's agent also made some adjustments: \$75.00 should be credited for an overpayment of rent for the month of November, 2018; and a different amount on the landlord's Monetary Order Worksheet than what is contained in the bank statements. I also find that given that the landlord has collected more than permitted by law for a security deposit, the tenants start out with a credit of \$775.00.

The landlord's agent was able to provide testimony with respect to what payments were received for rent, and given that testimony, and in the absence of any evidence to the contrary by the tenants, I find that the landlord has established the amount of \$4,511.27 for unpaid rent to the end of May, 2019.

DATE	AMOUNT DUE	AMOUNT PAID	AMOUNT OWED
November 2017	\$775.00 Security	\$1,550.00	-\$775.00
October 2018	\$1,550.00	\$1,158.73	-\$383.73
November 2018	\$1,550.00	\$1,625.00	-\$458.73
December 2018	\$1,550.00	\$1,550.00	-\$458.73
January, 2019	\$1,550.00	\$1,450.00	-\$358.73
February 2019	\$1,550.00	\$1,330.00	-\$138.73
March 2019	\$1,550.00	\$0.00	\$1,411.27
April 2019	\$1,550.00	\$0.00	\$2,961.27
May 2019	\$1,550.00	\$0.00	\$4,511.27

Since I am not able to determine that the landlord has provided copies of any utility bills to the tenants, I cannot consider them, and I find that the landlord has failed to establish what amount may be owed for utilities.

The landlord served the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) after obtaining an Order of Possession because the address was incorrect on the Order of Possession. The tenant admitted during the hearing that no rent had been paid. The tenants disputed a previous Notice, but not the Notice dated May 3, 2019. I have reviewed the Notice, and I accept that it was given in the approved form and I find that it contains information required by the Act, including the rental address as it appears in the tenancy agreement. Therefore, I find that the landlord is entitled to an Order of Possession. Since the effective date of vacancy has passed, I grant the Order of Possession effective on 2 days notice to the tenants.

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, ~~the landlord's application for an Order of Possession is hereby dismissed; the landlord already has an Order of Possession.~~ I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenants.

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

I hereby 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 \$4,611.27.

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: May 31, 2019

Amended: July 4, 2019

Residential Tenancy Branch