



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, MNRL, OPR, FFL

Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* (the “Act”) for an Order of Possession based on a 10 Day Notice to end Tenancy for Unpaid Rent or utilities (the “10 Day Notice”), for monetary compensation, for compensation for unpaid rent, and for the recovery of the filing fee paid for the Application for Dispute Resolution.

The Landlord and Landlord’s son were present for the teleconference hearing (the “Landlord”) as were the Tenant and the Tenant’s two sons (the “Tenant”). The Tenant confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Landlord’s evidence. The Landlord confirmed receipt of a copy of the Tenant’s evidence. Neither party brought up any issues regarding service.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party. Neither party called any witnesses.

Preliminary Matters

The Landlord confirmed that the Tenants moved out on or around May 11, 2019 and that they have possession of the rental unit back. Therefore, they are no longer seeking an Order of Possession. As such, pursuant to Section 64(3)(c) of the *Act* the application was amended to remove the claim for an Order of Possession. This decision will address the monetary claims of the Landlord only.

Issues to be Decided

Is the Landlord entitled to monetary compensation?

Is the Landlord entitled to compensation for unpaid rent?

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

Background and Evidence

While I have considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

The parties were in agreement as to the details of the tenancy. The tenancy began approximately 20 years ago with the rental of one rental unit in the home. In approximately 2006 or 2007 the Tenant began renting two rental units in the home. At the end of the tenancy rent in the amount of \$2,600.00 was due on the first day of each month for the rental of both units. There is no written tenancy agreement. The parties agreed that the Tenant was responsible for 75% of the utility bills for the property.

The Tenant stated that a security deposit of \$700.00 was paid to a previous landlord, while the Landlord stated that they never received a security deposit as it was paid to someone else and never passed along to them.

The Landlord stated that on May 2, 2019 they served the Tenant with a 10 Day Notice. The 10 Day Notice was submitted into evidence and states that \$2,600.00 was unpaid as due on May 1, 2019. The Landlord stated that no amount was paid towards May 2019 rent and they are therefore seeking compensation in this amount. The Landlord is also claiming \$392.71 for 75% of a gas and electricity bill for May 2019.

An electricity bill dated May 23, 2019 was submitted into evidence showing a charge of \$240.94. A gas bill dated May 29, 2019 was submitted showing a charge of \$282.68.

The Tenant was in agreement that rent and utilities for May 2019 were not paid. They referenced a Mutual Agreement to End Tenancy submitted in their evidence and stated that they were entitled to a free month of rent due to this. The Tenant explained that the Landlord was going to serve them with a Two Month Notice to End Tenancy for

Landlord's Use of Property (the "Two Month Notice"), but instead forced them to sign a mutual agreement.

The mutual agreement dated November 30, 2018 states that the tenancy will end on July 31, 2019. The Tenant stated that they should not have to pay the last month rent due to being evicted and as they would have received a free month of rent with an eviction through a Two Month Notice. They also stated that they did not pay the utilities for May 2019 as they moved out partway through the month. The Tenant further testified that it was difficult to find a new place to rent and that they were not able to afford to pay May 2019 rent for two places.

The Landlord testified that in November 2018 they approached the Tenant and explained that a close family member needed to move into the rental unit. However, they provided the option of a Two Month Notice or a mutual agreement that would allow more time for the Tenant to move. The Landlord stated that the Tenant chose to sign the mutual agreement and that it was clear that the Tenant would not be receiving a free month of rent with this option as handwritten at the bottom of the agreement. They stated that they found out the Tenants had moved out on May 11, 2019 after the fact.

Analysis

As stated in Section 26 of the *Act*, a tenant must pay rent when due as per the tenancy agreement. Although the parties did not have a written tenancy agreement they agreed that they had a verbal agreement to pay rent in the amount of \$2,600.00 by the first day of each month. As such, I find that the Tenant owed rent as due on May 1, 2019.

Although the Tenant stated that they had reason to not pay rent for May 2019, I do not find evidence to establish this. I accept the mutual agreement submitted into evidence which was signed by both parties. There is no provision under the *Act* to not pay a month of rent after signing a mutual agreement. Despite discussions of a Two Month Notice, I do not find any evidence that the tenancy ended due to a Two Month Notice. Therefore, I find that rent was payable as due on May 1, 2019 and award \$2,600.00 to the Landlord.

Regarding the utility bills, I also find that the Tenant is responsible for these bills for May 2019. The Tenant did not dispute that they were responsible for paying 75% of the utility bills and agreed that they did not pay the bills for May 2019.

Although the Tenants moved out in mid-May 2019, I find that the Landlord experienced a loss for the utilities that month that the Tenants must compensate the Landlord for. The Landlord stated that they were unaware of the date the Tenants were moving out, so it would have been difficult to find new tenants during May 2019. I accept the bills submitted into evidence that establish the total amount owing.

Therefore, I find that the Landlord is entitled to 75% of the electricity bill in the amount of \$180.70 and 75% of the gas bill in the amount of \$212.01 for total compensation of \$392.71 as claimed by the Landlord. As the Landlord was successful with their application, pursuant to Section 72 of the *Act*, I award the recovery of the filing fee in the amount of \$100.00. The Landlord is awarded a Monetary Order in the following amount:

| | |
|----------------------------------|-------------------|
| May 2019 rent | \$2,600.00 |
| 75% of May 2019 electricity bill | \$180.70 |
| 75% of May 2019 gas bill | \$212.01 |
| Recovery of filing fee | \$100.00 |
| Total owing to Landlord | \$3,092.71 |

Conclusion

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a **Monetary Order** in the amount of **\$3,092.71** for rent and utilities as outlined above, as well as for the recovery of the filing fee. The Landlord is provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible. Should the Tenant 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: June 25, 2019

Residential Tenancy Branch