



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding R. CAMBRIDGE VENTURES and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, OPR, PSF, MNDS, FF

Introduction

This hearing was convened in response to applications by the landlord and the tenants.

The landlord's application is seeking orders as follows:

1. For an order of possession;
2. For a monetary order for unpaid rent;
3. To keep all or part of the security deposit; and
4. To recover the cost of filing the application.

The tenants' application is seeking orders as follows:

1. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities;
2. To have the landlord provided services agreed upon; and
3. To recover the cost of filing the application.

Both parties appeared, gave 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 at the hearing.

Preliminary and Procedural issues

At the outset of the hearing the tenant testified that they moved out of the rental unit on November 27, 2019. The landlord stated they were not informed by the tenants.

As the tenants have vacated the premises, which has not been verified by the landlord. I find the landlord is entitled to an immediate order of possession.

The parties agreed that the parties will meet at the rental unit on November 29, 2019, at 12:00 PM (noon) to complete the move-out condition inspection report. The tenant may have an agent attend on their behalf.

As the tenancy has legally ended, I find it not necessary to consider the tenants' application.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The parties agreed that the tenancy began on September 1, 2018. Rent in the amount of \$1,600.00 was payable on the first of each month. The tenants paid a security deposit of \$800.00 and a pet damage deposit of \$800.00. The tenancy ended on or about November 27, 2019.

The landlord claims as follows:

a.	Unpaid rent for October and November 2019	\$3,200.00
b.	Unpaid utilities from June to October 2019	\$ 839.72
c.	Filing fee	\$ 100.00
	Total claimed	\$4,139.72

The landlord testified that the tenants did not pay rent for October and November 2019, which was always sent by etranfer. The landlord seeks to recover the cost of \$3,200.00.

The landlord testified that the tenants did not pay their portion of the utilities from June, to October 2019, which was 50%. The landlord seeks to recover the cost of \$839.72

The tenant testified that they sent the landlord two cheques and neither cheques have been cashed.

The tenant testified that the utilities were increasing, and they could not understand why. The tenant does not deny they did not pay the utilities for the months claimed.

The landlord argued that they did not receive any cheques from the tenants, and it would make no sense to send cheques when they have always paid the rent by etransfer.

The landlord argued that the tenants fully knew the amount of the cost of the utilities as they have received a copy of every invoice.

Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Rules about payment and non-payment of rent are defined in Part 2 of the Act.

Rules about payment and non-payment of rent

26 (1) *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

...

Although the tenant testified that they sent the landlord two cheques for the rent, they have not been cashed. Furthermore, the landlord denied they were ever received. I find the tenants breached section 26 of the Act, when they failed to pay rent for October and November 2019, and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover unpaid rent for the said months in the amount of **\$3,200.00**.

I accept the evidence of the landlord that the tenants failed to pay utilities. The tenants provided no evidence that they were paid and did not deny they did not pay their portion for the months claimed. I find the tenants failed to pay their portion of the utilities from June to October 2019, and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover the cost of unpaid utilities in the amount of **\$839.72**.

I find that the landlord has established a total monetary claim of **\$4,139.72** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$800.00** and pet damage deposit of \$800.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$2,539.72**.

At the hearing the parties agreed on a payment schedule for the balance due of \$2,539.72. The tenants will pay the above amount to the landlord in two equal payments of \$1,269.86. The first payment will be made on January 1, 2020 and the second payment of February 1, 2020. These payments are to be sent by e-transfer.

If the tenants fail to make any of the payment, the full amount becomes immediately due and owing and the 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 tenants' application is dismissed. The landlord is granted an order of possession.

The landlord is granted a monetary order and may keep the security deposit and pet damage deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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 02, 2019

Residential Tenancy Branch