



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPU-DR, OPUM-DR, FFL

Introduction

This hearing was convened by way of conference call concerning an amended application made by the landlords seeking an Order of Possession and a monetary order for unpaid rent or utilities and to recover the filing fee from the tenant for the cost of the application. The landlords' application was made by way of the Direct Request process which was referred to this participatory hearing, and an Interim Decision dated October 29, 2020 was provided to the parties.

The landlords' application sought \$976.00 for unpaid rent and \$610.00 for unpaid utilities. The first amendment is dated December 10, 2020 and is stamped as received by the Residential Tenancy Branch on December 15, 2020. The amendment changes the monetary claim amount to \$5,037.81 for unpaid rent and utilities combined for the months of September, October and November, 2020, and contains evidentiary material. The second amendment changes the amount to \$6,026.00 for unpaid rent and utilities to December, 2020. It was also stamped as received by the Residential Tenancy Branch on December 15, 2020, and signed by one of the landlords on December 10, 2020. It also contains evidentiary material.

Both landlords and the tenant attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

No issues with respect to delivery of evidence were raised. However, after the hearing had concluded, I received additional evidence from the landlords. The note from the Residential Tenancy Branch states that it was received on January 5, 2021 and placed under quarantine until January 11, 2021, and was not uploaded in time for the hearing.

The Rules of Procedure state that any evidence that an applicant intends to rely on must be provided to the Residential Tenancy Branch not later than 14 days before the hearing. Since the evidence was provided on January 5 and the hearing was scheduled for January

14, 2021, and was not available for the hearing, I decline to consider it. All other evidence provided has been reviewed and is considered in this Decision.

Issues to be Decided

- Have the landlords established that the notice to end the tenancy given by the landlords was given in accordance with the *Residential Tenancy Act*?
- Have the landlords established a monetary claim as against the tenant for unpaid rent or utilities?

Background and Evidence

The first landlord (CK) testified that the landlords are the mother and father of the tenant.

This month-to-month tenancy began in December, 2014 and the tenant still resides in the rental unit. Rent in the amount of \$976.00 is currently payable on the 1st day of each month, in addition to hydro. No security deposit or pet damage deposit was collected from the tenant. The landlord testified that a written tenancy agreement was prepared but a copy has not been provided for this hearing. The rental unit is a basement suite, and the landlords reside in the upper level of the home.

On September 2, 2020 the landlords served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) by “Xpresspost,” and a copy of the Notice has been provided as evidence for this hearing. It is dated September 2, 2020 and contains an effective date of vacancy of September 15, 2020 for unpaid rent in the amount of \$976.00 that was due on September 1, 2020 and unpaid utilities in the amount of \$183.00 following written demand on September 1, 2020. A copy of the “Xpresspost” ticket from Canada Post has also been provided, which contains that date in handwriting, but no date stamp from Canada Post. During the course of the hearing the landlord testified that the post office told her that they could not get a signature from the person it was addressed to if sent by registered mail due to COVID-19. The landlord checked the tracking number which says it was delivered on September 3, 2020.

The landlord further testified that the last time the tenant paid rent was in August, 2020.

The tenant received monthly invoices for hydro. The way it was paid, the landlords received one amount for rent and hydro combined. The tenant didn't pay rent for January

or hydro, but on January 1, 2021 the tenant put the hydro in his name, which is on a separate meter from the landlords' home. The hydro was on an equal payment plan of \$183.00 per month, but the tenant was in arrears \$610.00 in September, and \$193.00 for October. A copy of a bill for August, 2020 has been provided for this hearing showing that \$610.05 was paid by the landlords in September, 2020. The hydro company increased the amount of the payment plan due to the increase in usage. The tenant has also been using the shop and the landlords' hydro has increased. The tenant took the breakers out of it, and now the landlords need to replace it. The landlords have also provided a copy of a hydro bill for a pre-authorized payment of \$193.00 to be withdrawn on or after November 4, 2020, and according to the equal payment plan, that amount is to be paid each month for December 2020 and January, 2021.

The tenant has not served the landlords with an Application for Dispute Resolution disputing the Notice, and the landlords seek an Order of Possession and a monetary order in the amount of \$6,026.00 for unpaid rent; \$610.00 for unpaid utilities; and recovery of the \$100.00 filing fee.

The second landlord testified that his wife usually looks after the paperwork, however the landlords are in a situation because rent hasn't been paid for about 5 months and the hydro has not been paid. The landlords are on a fixed income and are having difficulty paying their bills. The tenant will say that he hasn't been around, but he has been around to accept the Notice.

The landlords' health is also suffering; the landlord is 70 years old and had to go back to work.

The tenant testified that he did not receive a notice to end the tenancy. The tenant and the landlords share the same mailbox up the street, and the tenant didn't get any mail in September, 2020.

In September, 2020 the parties had a pretty serious falling out, and the tenant barely stayed on the property. The tenant was afraid of the landlords due to threats, and both parents are alcoholics. The tenant's mom is sick, and the tenant's dad threatens all the time. The tenant does not drink or take substances. The tenant went camping in August until Labour Day long weekend; he had to hide and things got worse. The landlords smashed the tenant's personal property.

The tenant didn't pay rent in September, 2020 because his mother cut off the hydro to get back at the tenant. The tenant put the hydro in his name.

Analysis

The *Residential Tenancy Act* states that once served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice), the tenant has 5 days to pay the rent in full or dispute the notice by filing and serving the landlord with an Application for Dispute Resolution. If the tenant fails to do either within that 5 day period, the tenant is conclusively presumed to have accepted the end of the tenancy.

In this case, the landlord testified that the Notice was served by Xpresspost on September 2, 2020, which would be deemed to have been served 5 days later, or September 7, 2020. The landlord testified that the tenant has not paid the rent and has not served the landlords with an Application for Dispute Resolution disputing the Notice, and I have no such application before me.

However, the tenant testified that he has not been served with the Notice. The landlords served the Notice to the landlords' mailbox, which is shared with the tenant. I find that to be a conflict and considering the affirmed testimony of the tenant, I am not satisfied that the Notice was served in accordance with the *Residential Tenancy Act*, and the landlords' application for an Order of Possession is dismissed. If rent remains unpaid, the landlords are at liberty to serve another notice to end the tenancy, however the landlords must be able to demonstrate that it was served in accordance with the law, and not to a mailbox shared with the landlords.

With respect to the landlords' monetary claims, the tenant did not dispute the testimony that utilities in the amount of \$610.05 remains outstanding, or that no rent has been paid since August, 2020. The tenant testified that he had a reason for not paying rent for September, 2020, but the law states that a tenant must pay rent even if the landlord fails to comply with the *Act* or the tenancy agreement. I find that the landlords have established monetary claims of \$1,189.05 for utilities (\$610.05 + \$193.00 for October + \$193.00 for November and \$193.00 for December) and \$4,880.00 for unpaid rent from September, 2020 to January, 2021 ($\$976.00 \times 5 = \$4,880.00$).

Since the landlords have been partially successful, the landlords are also entitled to recovery of the \$100.00 filing fee.

Conclusion

For the reasons set out above, the landlords' application for an Order of Possession is hereby dismissed.

I hereby grant a monetary order in favour of the landlords as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$6,169.05.

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: January 15, 2021

Residential Tenancy Branch