



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPR, OPC, OPB, MNR, MNSD, FF, O
Tenants: CNR

Introduction

This hearing was convened by way of conference call to deal with applications filed by the landlord and by the tenants. The landlord has applied for an Order of Possession, for a monetary order for unpaid rent or utilities, for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit, and to recover the filing fee from the tenants for the cost of the application. The tenants have applied for an order cancelling a notice to end tenancy.

The landlord was represented at the hearing by an agent, who also called one witness. Neither of the tenants attended. The landlord provided evidence of having served the tenants with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on September 7, 2012. The tenants' application was filed on September 6, 2012 and the tenants provided evidence of having served the landlord by registered mail on September 6, 2012. Since the tenants have received a notice of the hearing by virtue of filing their own dispute and the landlord has provided proof of service of the Landlord's Application for Dispute Resolution, I find that there are no issues with respect to service and the landlord has served the documentation as required by the *Residential Tenancy Act*.

The landlord and the tenants provided evidentiary material prior to the commencement of the hearing, however some of the landlord's evidence was provided today. That evidence has not been provided within the time provided in the *Residential Tenancy Act*, and therefore is not considered. With the exception of the late evidence provided by the landlord, all other evidence has been reviewed and is considered in this Decision.

Since the tenants have not attended the hearing, the tenants' application is hereby dismissed without leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent or utilities?

Is the landlord entitled to an Order of Possession for cause?

Is the landlord entitled to an Order of Possession for breach of an agreement?

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

Is the landlord entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on February 29, 2012 and ended on or about October 3, 2012 when the tenants returned the keys to the rental unit to the landlord. Rent in the amount of \$950.00 per month was payable in advance on the 1st day of each month. On February 10, 2012 the landlord collected a security deposit from the tenants in the amount of \$475.00 which is still held in trust by the landlord. The tenants had no pets at the commencement of the tenancy, but acquired some dogs during the tenancy and the landlord attempted to collect a pet damage deposit but the tenants refused to pay it. The landlord's agent further testified that of the 2 tenants who signed the tenancy agreement, only one remained in the rental unit and the other moved out shortly after the tenancy began. Thereafter, 4 other tenants moved into the rental unit without the landlord's knowledge or consent. The rental unit is a basement suite and the landlord's family resides in the upper level of the house.

On August 15, 2012 the landlord personally served one of the named tenants with a 1 Month Notice to End Tenancy for Cause, a copy of which was provided for this hearing. The notice contains an expected date of vacancy of September 30, 2012 and contains reasons for ending the tenancy:

- Tenant has allowed an unreasonable number of occupants in the unit/site;
- Tenant or a person permitted on the property by the tenant has:
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord
 - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so
- Tenant has assigned or sublet the rental unit/site without landlord's written consent
- Tenant knowingly gave false information to prospective tenant or purchaser of the rental unit/site or property/park

- Residential Tenancy Act only: security or pet damage deposit was not paid within 30 days as required by the tenancy agreement.

The tenants failed to pay any rent for the month of September, 2012 and the landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the door of the rental unit on September 2, 2012. A copy of the notice was not provided for this hearing, but the landlord's agent testified that it stated that the tenants failed to pay rent in the amount of \$950.00 that was due on September 1, 2012.

The tenants also failed to pay for utilities prior to vacating the rental unit, and the landlord provided copies of 2 hydro bills and a Fortis gas bill. The landlord's agent testified that although the tenancy agreement doesn't specify the amount of such utilities, the tenants' portion was 25% and provided a copy of a Shelter Information form that was signed by the landlord which states 25% of hydro. The hydro bill dated August 15, 2012 is in the amount of \$165.00 for which the landlord claims \$41.25, being 25%. The second hydro bill is dated September 24, 2012 in the amount of \$188.00 and the landlord claims \$47.00. The Fortis gas bill is for the month of August in the amount of \$163.00 and the landlord claims \$40.75. The landlord also claims 25% of a bill not yet received and estimates that the Fortis gas bill for the month of September will be \$180.00 and the tenants' share is \$45.00.

The landlord's agent further testified that the tenants left the rental unit on October 3, 2012 and put the keys for the rental unit in the landlord's mail box on that date. The parties had spoken previously and the tenant had asked the landlord if the move-out condition inspection could take place on October 3, 2012 and the landlord agreed, but the tenants did not attend. The tenants did not pay any rent for the month of October, 2012 and the landlord claims \$950.00. The rental unit still contains items belonging to the tenants and the landlord has not been able to advertise the unit for rent until obtaining an Order of Possession.

The landlord's agent further testified that the extra 4 tenants have an obligation to pay an additional portion of the utilities, and the landlord claims \$20.00 per month for each of 4 new occupants from March to September, being \$560.00 but provided no evidence as to how that amount was calculated or that the tenants had agreed to more than 25% of the cost of utilities.

The landlord's witness testified that the tenants left the rental unit without moving all belongings. The witness is the spouse of the landlord and resides in the upper unit of the rental house. A moving truck was at the rental unit 2 or 3 weeks ago.

The landlord's witness further testified that the evidence provided the day of this hearing is photographs to substantiate the landlord's claim for damages, although the application does not include a claim for damages.

Analysis

In the circumstances, I accept the testimony of the landlord's agent and witness that the tenants returned the keys for the rental unit to the landlord on October 3, 2012 and I find that the tenancy ended that day. I further accept that the tenants were served with the 1 Month Notice to End Tenancy for Cause, and the tenants have not disputed that notice. The tenants filed a dispute to the notice to end tenancy for unpaid rent, but have failed to attend the hearing. Therefore, I find that the tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, being September 30, 2012.

The tenants did not move by that date but returned the keys to the landlord on October 3, 2012 without moving all belongings from the rental unit. Therefore, I find that the landlord has established a claim for unpaid rent for the months of September and October, 2012 in the amount of \$1,900.00.

I have reviewed the tenancy agreement and the utility bills provided by the landlord and I accept that the tenants are responsible for 25% of the bills. The tenancy agreement shows that water, electricity and heat are not included in the rent, and I accept the Shelter Information document provided by the landlord which shows that the tenants are required to pay 25% of the hydro. I also find it reasonable to conclude that since heat and electricity are shown as not included on the tenancy agreement, the tenants are liable for 25% of the gas bill. I find that the landlord has established a claim in the amount of \$41.25 for August hydro, September hydro in the amount of \$47.00 and \$40.75 for the Fortis gas bill for the month of August, for a total of \$129.00. I am not satisfied with respect to an estimate of Fortis gas payable by the tenants for the month of September, 2012.

In summary, I find that the landlord has established a claim in the amount of \$1,900.00 for unpaid rent, \$129.00 for unpaid utilities, and since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee for the cost of the application, for a total of \$2,079.00. I order the landlord to keep the security deposit in the amount of \$475.00 in partial satisfaction of the claim and the landlord will have a monetary order for the difference in the amount of \$1,604.00.

Conclusion

For the reasons set out above, the tenants' application is hereby dismissed without leave to reapply.

I hereby grant an Order of Possession in favor of the landlord on 2 days notice to the tenants.

I further order the landlord to keep the security deposit in the amount of \$475.00 and I grant the landlord a monetary order pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,604.00.

This order is final and binding on the parties 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: October 12, 2012.

Residential Tenancy Branch