



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPB, MNR, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking an Order of Possession for unpaid rent or utilities, an Order of Possession for breach of an agreement, a monetary order for unpaid rent or utilities, and to recover the filing fee from the tenants for the cost of the application.

The landlord and both tenants attended the hearing and each gave affirmed testimony. The parties were also given the opportunity to question each other.

During the course of the hearing the landlord advised that the tenants have vacated the rental unit and the landlord's applications for an Order of Possession are withdrawn.

The landlord also stated that he had provided a copy of the tenancy agreement as evidence for this hearing, but I have not received it. The landlord gave affirmed testimony about the tenancy agreement, which was not opposed by the tenants. No other issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

Has the landlord established a monetary claim as against the tenants for unpaid rent?

Background and Evidence

The landlord testified that this month-to-month tenancy began on July 4, 2016 and ended on June 2, 2017. Rent in the amount of \$1,200.00 per month was payable on the 1st day of each month. The landlord didn't collect a security deposit or a pet damage deposit, but the tenants said they would paint and clean the house in lieu of the security deposit and the first month's rent. The tenants were also to supply the paint, and no move-in or move-out condition inspection reports were completed. The rental

unit is a single family dwelling. The landlord testified that a copy of the tenancy agreement was provided for this hearing, however no copy is on file.

The landlord went out of country in mid-March, 2017 and upon his return noticed there was no rent paid, so he emailed the tenants asking about April's rent. The tenant said that she had to stay up all night to babysit a sump pump, and needed to be there every hour to turn it on so the tenants weren't going to pay rent. The email also said the tenants were charging the landlord \$25.00 per hour. The landlord hadn't left an emergency phone number for the tenants before going out of country, but they could have called a plumber. The landlord would have reimbursed them after providing the plumber's receipt.

The tenants are in arrears of rent the sum of \$1,200.00 for each of April and May, 2017. The landlord served the tenants, by personally handing to one of the tenants a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on May 9, 2017 a copy of which has been provided for this hearing. It is dated May 9, 2017 and contains an effective date of vacancy of June 1, 2017 for unpaid rent in the amount of \$2,400.00 that was due on April 1, 2017, and the tenants moved out on June 2, 2017. The rental unit was re-rented for June 16, 2017 so the landlord lost 2 weeks rent.

The landlord claims \$2,400.00 for unpaid rent and recovery of the \$100.00 filing fee.

The first tenant (CLP) testified that the sump pump started to act up on March 14, and the landlord arrived to replace the pump but replaced it with one that doesn't kick in by itself, so the tenant had to plug it in and unplug it. It wouldn't turn on to drain.

The landlord had told the tenants that they were to contact the landlord personally for any issues with the rental unit, but didn't tell the tenants he was leaving the country. The basement flooded and the tenant tried to reach the landlord in April, 2017 at the cell number the landlord had provided, but he wasn't using it anymore. The tenant sent several emails about the sump pump.

When asked how the tenant justifies \$2,400.00 of unpaid rent for the inconvenience, the tenant replied that she is trying to teach the landlord a lesson. No receipts were given to the landlord for repairs made by the tenants but the out-of-pocket expenses added up to about \$60.00. The landlord said that he agreed that the tenants didn't have to pay April's rent, but the tenant's husband didn't feel May's rent should be paid either. The tenants didn't have the money to pay for a plumber, and the landlord told the tenants not to.

The second tenant (SP) testified that when the pump went, the tenants vacuumed and emptied it into the toilet to prevent the basement from flooding, and the tenant worked on it for 20 days, and the tenants lost 3 days work as a result. The landlord was also supposed to pay the tenant for work, but never did.

Analysis

I agree that the landlord did not provide an emergency phone number to the tenants, and may not have maintained the rental unit in accordance with the *Act*, both of which are required by the landlord. However the *Residential Tenancy Act* states that a tenant must pay rent even if the landlord fails to comply with the *Act* or the tenancy agreement.

It also states that a landlord must make repairs, and the tenant is permitted to make emergency repairs, but there are rules about that:

Emergency repairs

33 (1) In this section, "**emergency repairs**" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii) the primary heating system,
 - (iv) damaged or defective locks that give access to a rental unit,
 - (v) the electrical systems, or
 - (vi) in prescribed circumstances, a rental unit or residential property.

(2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;
- (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
- (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

(4) A landlord may take over completion of an emergency repair at any time.

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

- (a) claims reimbursement for those amounts from the landlord, and
- (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

The tenants have withheld rent for 2 months without the landlord's written consent and without legal justification to do so. Therefore, I find that the landlord has established the \$2,400.00 claim.

Since the landlord has been successful with the application the landlord is also entitled to recovery of the \$100.00 filing fee.

Conclusion

For the reasons set out above, 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 \$2,500.00.

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: August 04, 2017

Residential Tenancy Branch