



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL, FFL

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking an Order of Possession and 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 a tenant attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other. No issues with respect to service of evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

At the commencement of the hearing, the tenant submitted that the tenants have vacated the rental unit. Therefore, I dismiss the landlord's application for an Order of Possession.

Issue(s) to be Decided

The issue remaining to be decided is:

- has the landlord established a monetary claim as against the tenants for unpaid rent or utilities?

Background and Evidence

The landlord testified that this fixed-term tenancy began on December 15, 2018 and reverted to a month-to-month tenancy after December 15, 2019. The tenancy ended on April 17, 2022. Rent in the amount of \$1,950.00 was payable on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the

tenants in the amount of \$975.00 which is still held in trust by the landlord and no pet damage deposit was collected. The rental unit is a full house and a copy of the tenancy agreement has been provided for this hearing.

The landlord further testified that on March 29, 2022 the tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by handing it to one of the tenants. A copy has been provided for this hearing and it is dated March 29, 2022 and contains an effective date of vacancy of April 8, 2022 for unpaid rent in the amount of \$1,950.00 that was due on March 1, 2022 and unpaid utilities in the amount of \$295.66 following written demand on March 1, 2022. The landlord testified that no rent had been paid for March, 2022.

The gas and hydro are not included in the rent; the tenants are to pay 70% and the landlord pays the other 30%. Copies of 2 natural gas bills have been provided for this hearing. The first is for the month of February in the amount of \$422.36, for which the tenants owe \$295.65. The March, 2022 bill is in the amount of \$129.15 and the tenants owe \$90.40. The landlord always sends photographs of the bills to the tenants by text message, and the February gas bill was sent to the tenants on March 1, 2022, and the March bill was sent on April 4, 2022. The tenants also owe for hydro, and the landlord testified that the bill is \$282.39 and the tenants owe 70%. No hydro bills have been provided for this hearing.

The landlord further testified that on November 15, 2021 the landlord told the tenants by text message that the landlord's mom and brother and kids would be moving in, and the tenants had to vacate effective February 28, 2022. However, the plans changed because the landlord's father-in-law passed away, but the tenants couldn't stay because they didn't pay rent for March, 2022.

The landlord also gave the tenants a One Month Notice to End Tenancy for Cause on March 12, 2022.

The landlord has not received the tenants' forwarding address in writing.

The tenant testified that the rental unit was not a full house, but the upper level of a house and the lower level was also tenanted.

On November 3, 2021 the tenant received a text message from the landlord increasing rent by 1.5% to start in the new year, and then asked the tenants to increase rent to \$2,300.00. Copies of text messages have been provided by the tenants for this hearing. The parties agreed to a \$100.00 rent increase on November 8, 2021.

However, on November 14, 2021 the landlord sent a text message to the tenant saying that a brother-in-law was moving in, and when the tenant advised that the tenancy could only end for a close family member, the landlord changed the story to say that her mother and son would be moving in. The tenants were not served with a Two Month Notice to End Tenancy for Landlord's Use of Property.

On February 28, 2022 the landlord sent another text to the tenants saying that they had to be out by the next day. Then the landlord showed up with another person saying they were going to renovate and the tenants had to move out.

On March 4, 2022 the landlord and her husband called the tenants, and the husband was screaming in the background. The tenant said that it was not legal, and the tenants are entitled to compensation, however the landlord hung up the phone.

On March 12, 2022 the landlord showed up again with more papers and denied that any compensation would be paid to the tenants, and that there were too many people living in the house. It was a One Month Notice to End Tenancy for Cause with an effective date of vacancy of April 12, 2022. On March 29, 2022 the landlord showed up with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

On April 15, 2022 the tenant called the landlord stating that the tenants had moved out. The tenant left the keys inside the door.

The tenants did not receive any utility bills since the tenants paid \$304.00 on February 12, 2022. The tenant asked for the bills and the landlord said she was keeping the security deposit for unpaid utilities and unpaid rent.

New tenants have moved into the rental unit who are not family members of the landlord.

The tenant lived in the rental unit with her 74 year old mother, husband and 2 children. The tenant and her mother are named in the tenancy agreement, but the landlord served the hearing package by registered mail naming both tenants on the envelope, and did not serve each tenant individually.

Analysis

Both parties have been incorrect. The law states that a tenant is entitled to compensation in the amount of 1 month's rent if the landlord serves a Two Month Notice to End Tenancy for Landlord's Use of Property. In this case, the landlord did not serve

a notice in the approved form, and therefore the tenants did not have to vacate and are not entitled to compensation. A landlord may not end a tenancy for any reason by way of text message or letter, but must use an approved form.

The landlord claims unpaid rent and unpaid utilities. Where a party makes a monetary claim, the landlord must serve all respondents individually. In this case the landlord did not do so.

The landlord did not apply to amend the application, and the name of one of the tenants is incorrect.

Since the landlord has not complied with the law and has not correctly named the tenants, I dismiss the landlord's application without leave to reapply.

The landlord currently holds a security deposit in the amount of \$975.00 and testified that the tenants have not provided a forwarding address. The *Residential Tenancy Act* states that a landlord has 15 days from the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to return the security deposit in full to the tenant or to make an application claiming against the security deposit.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed in its entirety without leave to reapply.

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: July 26, 2022

Residential Tenancy Branch