

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute Codes:

OPR, CNR, MNR, MNDC

Introduction.

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*.

The landlord applied for the following:

- An order of possession pursuant to Section 55;
- A monetary order for the recovery of unpaid rent pursuant to Section 67

The tenant applied for the following:

- An order to cancel the notice to end tenancy, pursuant to Section 46;
- A monetary order for utilities that the tenant paid in full, instead of half as per the tenancy agreement, pursuant to Section 67.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

On October 31, 2008 the landlord served the tenant with a one month notice to end tenancy for cause. The tenant applied to dispute the notice and this matter was heard on December 01, 2008. The landlord stated that he was not served the notice of hearing and was unaware that the tenant had applied to dispute the notice. Since the landlord did not attend the hearing and the tenant testified that she had served the notice of hearing to the landlord in person, the notice was set aside and the tenancy continued.

Issues to be decided

Is the landlord entitled to an order of possession and a monetary order for unpaid rent?

Is the tenant entitled to a monetary order for half the utilities?

Background and Evidence

The tenancy started on October 01, 2008 on a month to month basis. Rent is currently \$1200.00 due on the first day of each month. The written tenancy agreement contains a clause that requires the tenant to pay half the utility bill. The tenant stated that she paid a security deposit of \$250.00 on October 01, 2008.

Landlord's Application

The landlord stated that the tenant paid rent for the first month of the tenancy i.e. October 2008 and has not paid any rent since then. In addition, the tenant did not pay the utility bill and the service to the rental unit was cut off.

The landlord stated when he did not receive rent for November; he called the tenant approximately ten to fifteen times and left messages for her. The tenant did not return any of the landlord's calls. Finally, the landlord visited the rental unit and waited outside for four hours, but did not meet the tenant.

The landlord also stated that he gave the tenant appropriate notice to inspect the unit on February 23, 2009. When he arrived at the house, the door was opened by a person holding a baseball bat in one hand and a leashed pit bull in the other hand. The landlord stated that being 82 years old, he felt threatened and left.

The landlord has applied for an order of possession effective immediately and for a monetary order for outstanding rent in the amount of \$6000.00.

Tenant's Application

The tenant testified that she did not owe the landlord rent as she had paid rent every month since the start of the tenancy in October 2008 and has receipts as proof of payment. The tenant stated that she had paid rent to the landlord's spouse who passed away a week prior to the hearing. The tenant has not filed any receipts with this application.

The tenant stated that she had submitted a receipt on her earlier application to dispute the notice to end tenancy (December 01, 2008). Upon reviewing this file, I found that there is no receipt attached to this file.

The tenant also stated that the receipts were destroyed in a fire but could not remember the date of the fire. The tenant stated that the landlord hired a hit man (JT) to evict her and to set the house on fire. The tenant has filed an undated note signed by JT which states that JT was hired to evict the tenant by December 12, 2009 for non payment of rent. The tenant has also filed a letter from the Ministry of Attorney General dated January 02, 2009 regarding JT was charged for arson and named the tenant as a victim of this crime.

From the above evidence, it was determined that the fire took place sometime prior to January 02, 2009. I explained to the tenant that since the fire took place prior to January 02, 2009, it was not possible that the rent receipts issued after that date for January, February and March were destroyed in this fire.

. The tenant has submitted into evidence a hydro bill dated January 30, 2009 in the amount of \$601.22. The tenant has also filed verification that \$1118.96 was paid by Social Services on her behalf to Teresen Gas on February 27, 2009 for an outstanding utility bill. The tenant is also claiming \$800.00 towards these utility bills.

During the hearing, the tenant stated that she intended to move out by the end of May and requested the landlord to allow her to stay. She stated that she would pay rent for both March and April if the landlord would agree. I reminded the tenant that she had testified earlier that she had already paid rent for March.

Analysis

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim must fail.

In this case, the tenant stated that she had paid rent and had rent receipts to prove payment. The landlord stated that rent was not paid since November 2008. The tenant

did not file any receipts and therefore in the absence of evidence to support her claim, I find that it is more likely than not that the tenant did not pay rent.

Accordingly, the notice to end tenancy is upheld and pursuant to section 55(2) I am issuing a formal order of possession two days after service on the tenant. This Order may be filed in the Supreme Court for enforcement

The landlord has established a monetary claim in the amount of \$6000.00 which consists of rent for the months of November 2008 through March 2009.

Pursuant to the tenancy agreement and the evidence filed by the tenant, I find that the tenant has established a claim for \$800.00 which is the amount that the tenant has applied for.

I will use the offsetting provisions of section 72 of the *Act* to grant the landlord a monetary order in the amount of \$5,200.00 which consists of outstanding rent of \$6000.00 minus the tenant's entitlement of \$800.00 for utilities. I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the amount of **\$5,200.00**. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord an order of possession effective two days after service on the tenant. I also grant the landlord a monetary order in the amount of **\$5,200.00**.

Dated April 02, 2009.

Dispute Resolution Officer