

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, MNSD, FF

Introduction.

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

The landlord applied for an order of possession and a monetary order for unpaid utilities and the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of his monetary claim.

The tenant applied for an order to cancel the notice to end tenancy and for an order for the landlord to comply with a verbal agreement between both parties, to amend the terms of the tenancy agreement with regard to the tenant's share of utilities.

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

Issues to be decided

Is the landlord entitled to an order of possession? Does the tenant owe the landlord for utilities and if so, in what amount?

Background and Evidence

The tenancy started on May 16, 2008, on a month to month basis. Rent is currently \$750.00, due on the first day of each month. The written tenancy agreement contains a clause that requires the tenant to pay 30% the utility bill. The tenant stated that she paid a security deposit of \$375.00 prior to moving into the rental unit.

Landlord's Application

The landlord stated that from the start of the tenancy, the tenant paid her share of utilities in instalments totalling \$361.09. The last instalment was paid on February 22, 2009. Both parties agree that the tenant's share from the start of the tenancy to December 31, 2008 is \$484.50 and that the tenant still owes \$123.41 for the same period.

The landlord stated that the tenant has not paid utilities for January and the following months and has filed copies of utility bills to support his claim of \$554.03, that he claims the tenant owes him. On March 20, 2009 the landlord served the tenant with a ten day notice to end the tenancy for non payment of utilities.

The landlord has applied for an order of possession effective immediately and for a monetary order for outstanding utilities, in the amount of \$554.03. The landlord has also applied to recover the filing fee and to retain the security deposit in partial satisfaction of his monetary claim.

Tenant's Application

The tenant stated that there is one rental suite on the upper level, while the lower level that the dispute suite is located on, consists of two rental suites. The upper tenant pays 40% of the utility bills while the lower tenants pay 30% each. The tenant stated that she had discussed the inequality of this arrangement, with the landlord and he agreed to increase the upper tenant's share and allow her to pay only 20% of the utility bills.

The landlord argued that he did not agree to amend the terms of the tenancy agreement and the tenant's share as per the tenancy agreement is 30% of the utility bill. The tenant did not file any evidence to support her claim that the landlord had agreed to decrease her share of utilities to 20% of the utility bill.

The tenant stated that she did not pay the amount of the utilities that the landlord is claiming as he did not provide her with any bills and therefore she was unable to confirm the amount that she owed. The tenant also stated that the upper tenant was paying more than 40% but the landlord was still charging her 30% of the utility bill.

The tenant is applying to set aside the notice to end tenancy.

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 disputed her share of the utility bill and stated that the landlord had agreed to allow her to pay 20% instead of 30% of the utility bill as per the tenancy agreement. The landlord denies agreeing to allow the tenant to pay 20% instead of 30% of the utility bill.

The tenant did not file any written evidence to confirm this amended arrangement and therefore in the absence of evidence to support her claim, I find that the tenant's share of utilities is 30% of the bill, as per the terms of the written tenancy agreement.

I find that the landlord has filed utility bills to support his claim of \$554.03 and therefore has established a monetary claim for the same. Accordingly, I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the amount of **\$554.03**. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Pursuant to section 55 I am issuing a formal order of possession to be served on the tenant, only in the event that the tenant does not pay \$554.03 on or before 1p.m. on May 3, 2009. This Order may be filed in the Supreme Court for enforcement if necessary.

If the tenant does not comply with the monetary order and is served the order of possession, resulting in the end of the tenancy, the landlord may retain the security deposit and accrued interest in partial satisfaction of his monetary claim.

The tenant did not pay her share of utilities because the landlord did not provide the tenant with copies of the utility bills. Therefore, I find that the landlord is partially responsible for the reason for this application for dispute resolution. For this reason the landlord must bear the cost of filing his application.

Conclusion

I grant the landlord a monetary order in the amount of **\$554.03** to be paid on or before 1p.m. on May 30, 2009. I also grant the landlord an order of possession to be served **only in the event that the tenant does not comply with the monetary order.**

Dated May 20, 2009.

Dispute Resolution Officer