



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNR, ERP, LAT, OLC, RP, OPR, MNR, FF

Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties and their witnesses the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties and the witnesses.

All testimony was taken under affirmation.

Issues(s) to be Decided

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together.

Tenants application

This is a request to have a Notice to End Tenancy cancelled, an order for the landlord to continue supplying utilities, and a request for an order to change the locks. The applicant is also requesting that the landlord bear the \$50.00 cost of the filing fee paid for her application for dispute resolution.

Landlords application

This is a request for an Order of Possession based on a Notice to End Tenancy for non-payment of rent, and a request for a monetary order for outstanding rent totalling \$350.00. The applicant is also requesting that the tenant bear the \$50.00 cost of the filing fee paid for the application for dispute resolution.

Background and Evidence

The main issue in dispute at this hearing is the amount of rent that is to be paid monthly.

The tenant claims that her rent has always been \$400.00 a month, including utilities, and that she paid a \$200.00 security deposit.

The landlord claims that the rent has always been a \$750.00 per month plus 1/3 of the utilities, and that the tenant paid a \$375.00 security deposit.

The tenant testified that:

- She has always paid \$400.00 a month for the rent in cash to the landlord however the landlord has never issued a receipt.
- She has never paid any of the utilities as they were included in the rent of \$400.00 per month
- When the house sold to the new owners the owners increase the rent to \$750.00 per month plus are now charging her 1/3 of the utilities.
- Although the landlords claim she paid a \$375.00 security deposit she did not, she only paid \$200.00.

The tenant is therefore asking that the Notice to End Tenancy that's been given to her be cancelled as rent and utilities are fully paid. She is also asking for an order that the

landlord's supply utilities that she claims were always included in the rent. The tenant is also requesting that the locks be changed claiming that there has been unauthorized access by the landlords or the landlord's agent.

The landlord's representative testified that:

- The rent for this rental unit has always been \$750.00 per month plus 1/3 of the utilities.
- The tenant herself admitted that the rent was \$750.00 per month plus one third of the utilities, at the very first meeting with the new owners; however at that time she requested that the rent and utilities be reduced, claiming she could no longer afford them.
- Even at the time of sale the vendor indicated that the rent per month is \$750.00 and it is recorded on the purchaser's statement of adjustments.

Witnesses for the landlord both testified that:

- The tenant admitted to them that the rent for \$750.00 per month plus 1/3 of the shared utilities.

Analysis

It is my finding that the landlords have shown "on the balance of probabilities" that the rent for this rental unit has always been \$750.00 per month plus 1/3 of the utilities.

It is my decision that the tenant has not met the burden of proving that her rent has always been \$400.00 per month with utilities included.



Dispute Resolution Services

Page: 4

Residential Tenancy Branch
Ministry of Housing and Social Development

It's unfortunate that the previous landlord was not available at the hearing to confirm what the previous rent had been however it is my finding that the documents that were produced at the time of sale of the rental unit, support the claim that rent was \$750.00 per month.

Further the sworn testimony of witnesses called by the landlord support the claim that the rent was \$750.00 per month plus 1/3 of the utilities.

I therefore will not be setting aside the Notice to End Tenancy and this tenancy ends. Since this tenancy is ending I will also not be issuing any orders of the landlords to change locks or supplying utilities.

Conclusion

Tenant's application

The tenant's application is dismissed in full without leave to reapply.

Landlord's application

I have issued an Order of Possession for two days after service on the tenant, and have issued an order for the respondent to pay \$350.00 for outstanding rent for October 2009 and a further \$50.00 for the filing fee paid for this hearing, for a total of \$400.00

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: November 19, 2009.

Dispute Resolution Officer