



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, OPB, MNSD, MNR, MNDC, & 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 the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issues(s) to be Decided

This is a request for an Order of Possession and a request for a monetary order for \$3156.00. The applicant is also requesting that the respondent bear the \$50.00 cost of the filing fee that was paid for this application for dispute resolution.

Background and Evidence

The applicant testified that:

- The tenants failed to pay rent for the months of August 2009 September 2009 and October 2009 in the amount of \$900.00 per month for a total of \$2700.00.
- The tenant never inform the landlord that she was vacating and never returned any keys, and in October 2009 after getting advice from the Residential Tenancy Branch, he gained access to the rental unit and discovered she had vacated.

- The tenant also failed to pay her share of the utilities for the rental unit and at this time goes \$456.31.

The landlord stated that he no longer needs an Order of Possession however is requesting an order for the outstanding rent and utilities, and for the filing fee to be paid.

The tenant testified that:

- Due to a mould problem in the rental unit, she came to the conclusion that it was not healthy to live in the rental unit any longer and therefore on May 7, 2009 she gave the landlord written and verbal notice that she would be vacating the rental unit.
- The landlord informed her that the mould is an ongoing problem and since it is such a health issue, she decided it would not be safe to continue living in the rental unit.
- She believes mould in the rental unit was causing health issues for herself and her child and therefore does not believe that she should have to pay for any further rent.
- She paid rent to the end of June 2009, however she vacated the rental unit in May of 2009 and she believes the landlord was fully aware that she had vacated.
- The landlord cashed the July 2009 post-dated cheque even though she had requested he not do so.
- She was to pay 1/3 of the utilities starting from December 2008, because she was not in the rental unit very much in the month of November 2008.

Analysis

The tenant claims to have given a Notice to End Tenancy however she has provided no evidence to support that claim other than her own testimony. The burden of proving a claim lies with the person making the claim and when it is just that persons word against that of the other that burden of proof is not met. Therefore it's my decision that the tenant has not met the burden of proving that she ever gave a Notice to End Tenancy to the landlord.

I'm also not convinced that the landlord was aware the tenant had vacated the rental unit in May of 2009. The tenant did not return any keys to the landlord, and I'm not even convinced that the tenant was out of the rental unit in May as she testifies.

The tenant claims that there were mould problems in the rental unit that made it unsafe for her to continue living in the rental unit however there is no evidence to show that she ever informed the landlord that she was having health issues, and at no time did the tenant ever apply for dispute resolution to have the alleged mould problems rectified.

Therefore it is my decision that I will allow the full amount of rent claim by the landlord.

I also allow the landlords claim for utilities. I have reviewed the landlord's estimates I find that the amount claimed by the landlord for utilities has been accurately calculated, and that the tenants still owes \$456.31.

I further ordered that the respondent bear the \$ 50.00 cost of the filing fee paid for this hearing.



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Conclusion

I allow the landlords full monetary claim of \$3206.00. I therefore order that the landlord may retain the full security/pet deposits plus interest:

\$902.29

I further Order that the Respondent(s) pay to the applicants the following amount:

\$2303.71

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 30, 2009.

Dispute Resolution Officer