



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, OPC, MNR, FF, O

Introduction

This hearing was convened to deal with the landlord's application for an Order of Possession for unpaid rent, and for cause, and for a monetary order for unpaid rent. Both parties appeared by conference call and gave evidence.

The tenant vacated the premises on January 31, 2010 by giving proper notice, and therefore, the application for an Order of Possession is dismissed without leave to reapply.

During the hearing, the landlord made an application to amend her Application for Dispute Resolution by adding a claim to retain a portion of the security deposit in satisfaction of her claim, which was allowed.

Issues(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, and if so is the landlord entitled to recover the filing fee from the tenant for the cost of this application?

Background and Evidence

The residence is a 2 bedroom basement suite in a house that has an additional 1 bedroom basement suite that is occupied by another tenant. The landlords reside in the upper unit of the residence.

The month-to-month tenancy began on April 1, 2009 and ended on January 31, 2010. Monthly rent was payable on the 1st day of each month in the amount of \$1,000.00 and a security deposit of \$500.00 was paid during the 1st week of April, 2009.

The landlord testified that when the tenant originally looked at the unit, she felt some compassion for the tenants because of some health and disability concerns and because the tenant had described the unhealthy conditions of the apartment they had been renting. The suite in this residence was advertised as being available for March 15, and the tenant could move in any time. She stated that the tenant agreed to pay an additional \$200.00 for the period of March 15th to 31st even though the tenant did not move in until April 1st due to her obligations in her previous tenancy.

The landlord testified that the unit was brand new and very clean, but no move-in or move-out inspection report was completed. She did state that a Tenancy Agreement was presented to the tenant, but states that the tenant refused to sign it. When asked why she allowed the tenant to move in after the refusal, she stated that it was her mistake. Further, when asked why there was no move-in or move-out inspection, she replied that it was her mistake.

The landlord served a 1 Month Notice to End Tenancy for Cause dated December 25, 2009 requesting that the tenant vacate the residence by January 31, 2010, and the tenant served notice to vacate dated December 25, 2009 upon the landlord.

The tenant testified that she had been living in another apartment that was infested with mould which was causing her daughter more serious health issues, and that she had limited time to find another place for her and her 2 children to reside.

When the tenant arrived at this residence to view it, 2 other women were there as well and the landlord had just accepted a security deposit from them to rent the same unit. The landlord gave the women back their security deposit before this tenant had even seen the suite. The tenant said she felt sorry for the other women and commented to

her daughter that perhaps they did not want to move in because of the treatment of the other women who wanted to rent the unit, but since they had limited time to find a place to live, they decided to stay. The tenant states that she told the landlord at that time that she could not move in until April 1, 2010.

The Ministry of Human Resources sent the security deposit and rent directly to the landlord, and the social worker called the landlord in the presence of the tenant, and April 1, 2010 was agreed on.

She states that when she moved in, the living room carpet was very dirty, but the bedrooms had new carpet. Further, the fridge was broken and required repairs or replacement.

The landlord asked the tenant to ask the Ministry for more money for the loss of rent for the period of March 15th to 31st because she had turned others away. The tenant replied that she would ask, but the Ministry isn't likely to give more money just because the tenant asked. The tenant did ask, and the Ministry declined to pay the extra \$200.00 requested.

Analysis

I find that the tenancy ended mutually.

The unsigned Tenancy Agreement entered as evidence states that the rent is \$1,000.00 per month payable on the 1st day of each month, but says nothing about \$200.00 for an earlier period and contains no dates at all.

I find that there is insufficient evidence before me to support the landlord's claim that the tenant had agreed to pay an additional \$200.00 for a period of time before the tenant moved into the residence.

Conclusion

The landlord's application for a monetary order for unpaid rent or utilities is hereby dismissed without leave to reapply. I also order that the landlord return the security deposit to the tenant forthwith, and I hereby make a monetary order in favour of the tenant in the amount of \$500.00.

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: February 24, 2010.

Dispute Resolution Officer