



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, AAT, O, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord is seeking an order of possession and a monetary order. The tenant is seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord and his agent, the tenant and occupant witness.

Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

In addition it must be decided whether the tenant is entitled to a monetary order for an overpayment of rent and for an order to direct the landlord to provide unrestricted access to the rental unit and to clean up the yard, pursuant to sections 30, 32, 67, and 72 of the *Act*.

Background and Evidence

The tenancy began on September 1, 2009 as a month to month tenancy for a current monthly rent of \$625.00 due on the 1st of the month and a security deposit of \$275.00 was paid. Due to a previous dispute resolution decision the security deposit has been reduced to \$250.00.

The landlord issued a 10 Notice to End Tenancy for Unpaid Rent in the amount of \$625.00 when the tenant failed to pay the rent on July 1, 2010, with an effective vacancy date of July 11, 2010. The tenant had 5 days to pay the rent or file an Application for Dispute Resolution. The tenant did not file an Application for Dispute Resolution to cancel the notice and both parties agree the tenant has not paid rent for July and August 2010.

The tenant testified that she has never seen the receipts submitted by the landlord prior to the receipt of his evidence package and that they are fraudulent. The tenant did stated in the hearing that she wanted to end the tenancy as soon as possible but has not yet been able to find a new place.

The tenant testified that when the tenancy began the Ministry of Housing and Social Development (HSD) was paying rent directly to the landlord out of her income assistance the amount of \$375.00 and that she was topping up the difference to \$550.00 in cash from September to December 2009 (\$175.00).

The tenant goes on to say that for January to June 2010 HSD paid rent directly to the landlord in the amount \$550.00 and that she did not know that HSD had changed her file and so she continued to top up the landlord in cash for \$175.00 for January and February 2010.

The tenant acknowledges she agreed to a rent increase effective April 1, 2010 of \$75.00 and so she provided the landlord \$250.00 each month from April to June 2010. The tenant testified that HSD required the tenant to have the landlord sign a receipt of their making each month before she provided the landlord with the additional cash.

The tenant provided copies of computer print outs from HSD for each benefit month from December 2009 to June 2010 showing she was entitled to \$375.00 per month (the shelter portion for a single person) and that starting in January 2010 HSD was forwarding rent cheques directly to the landlord in the amount of \$550.00.

The tenant did not provide copies of the receipts she stated she had the landlord sign. The landlord confirmed he signed receipts in the amount of \$75.00 not for \$250.00. The tenant stated that the ministry has them as they "were going to take care of it". The tenant did not provide any reason that she did not get copies of the receipts for this hearing.

The tenant also testified that HSD did not provide her with any rent monies for the months of July and August 2010 because they believed that the tenant had already paid the rent by way of these suggested overpayments. The tenant did not provide any computer print outs confirming what she received from HSD for her shelter portion for July and August 2010.

The tenant's occupant witness testified that he lived in the rental unit with the tenant and their baby and that he was with the tenant when she paid the additional rent in cash and that he had the landlord sign these receipts as well.

Analysis

As the tenant and her occupant witness have failed to provide documentary evidence that they state is available but not in their possession for this hearing, I must rely on the testimony provided by the parties. Because the occupant witness confirms he is living

with the tenant and their baby and the computer print outs show the tenant was receiving income assistance for a single person and the fact that the tenant did not notice that her income assistance had been reduced by \$175.00 to accommodate for the increased payment to the landlord, I find the tenant's testimony to be unreliable.

I find the tenant has failed to provide sufficient evidence to substantiate her claim and dismiss this portion of the tenant's application.

As all parties agree the tenant did not pay rent in accordance with Section 26 of the *Act* that states a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, regulations or the tenancy agreement, and the tenant failed to submit an Application for Dispute Resolution to cancel the 10 Day Notice, I find, in accordance with Section 46(5) the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice.

As the tenant has accepted the end of the tenancy, I find that her application for an order to direct the landlord to provide unrestricted access to the rental unit and to clean up the yard is no longer applicable and I dismiss them both.

Conclusion

I find that the landlord is entitled to an Order of Possession effective **two days after service on the tenant**. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,300.00** comprised of \$1,250.00 rent owed and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$250.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$1050.00**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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: August 31, 2010.

Dispute Resolution Officer