



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes: *OPR, CNR, MNR, OLC, RP, 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 for a monetary order for unpaid rent and the filing fee. The tenant applied for an order to cancel the notice to end tenancy and for an order seeking landlord's action to comply with the *Act* and make repairs to the rental unit. The tenant also applied for the recovery of the filing fee.

The hearing was originally scheduled for September 15, 2010. The tenant was represented by her sister who informed me that the tenants had to attend a family funeral in Alberta which was taking place at the exact same time as the hearing. Therefore the tenant was unable to attend. The tenant's sister asked for an adjournment as she stated that she was not fully informed about the details of the dispute. The hearing was therefore reconvened to the next day.

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

During the hearing, the tenant informed me that she had plans to move out and had already found a place for October 01. Therefore since the tenancy is ending, the portion of the tenant's application to do with an order for repairs is moot and accordingly dismissed.

Issues to be decided

Is the landlord entitled to an order of possession and a monetary order for unpaid rent?

Background and Evidence

This tenancy started on March 24, 2010, for a fixed term of one year. Rent is \$1,200.00 due on the first day of each month. The rent does not include utilities.

The landlord stated that the tenant failed to pay rent for the month of July and on July 26, 2010; the landlord served the tenant with a ten day notice to end tenancy. The tenant filed an application to dispute the notice in a timely manner. The tenant continues to occupy the rental unit and now owes rent for August and September as well. The tenant has also failed to pay her share of utilities and the landlord filed evidence to support his claim of \$258.12 which represents the tenant's share of utilities for July and August. The landlord is at liberty to file an application for utilities for September when he receives the bill. The landlord has applied for an order of possession effective two days after service on the tenant and a monetary order for unpaid rent (\$3,600.00), plus utilities (\$258.12) plus the filing fee (\$50.00) for a total of 3,908.12.

The tenant stated that she paid rent in cash for both July and August but did not receive a receipt. The tenant agreed that she had not paid rent for September.

The tenant has applied for the recovery of the filing fee.

Analysis

In this case the tenant stated that she paid rent in cash for the months of July and August and did not receive a receipt. The landlord denied having received rent for these months.

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 fails. Based on the sworn testimony of both parties I find that the tenant did not pay rent for the months of July and August .

I accept the landlord's evidence in respect of the claim. The tenant received the notice to end tenancy for unpaid rent, on July 26, 2010 and did not pay rent within five days of receiving the notice to end tenancy and the time to do so has expired.

In these situations, the *Residential Tenancy Act* provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the Notice. Pursuant to section 55(2), I am issuing a formal order of possession effective two days after service on the tenant. The Order may be filed in the Supreme Court for enforcement.

I find that the landlord has established a claim of \$3,858.12 for unpaid rent and utilities. Since the landlord has proven his case he is also entitled to \$50.00 for the filing fee. I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the amount of \$3,908.12. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The tenant has not proven her case and therefore must bear the cost of filing her application.

Conclusion

I grant the landlord an order of possession effective two days after service on the tenant. I also grant the landlord a monetary order in the amount of **\$3,908.12**. The tenant's application is dismissed in its entirety.

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: September 16, 2010.

Dispute Resolution Officer