

DECISION

Dispute Codes MT, CNR, MNDC, FF, OP

Introduction

The Tenant wishes to apply for more time to make an application to cancel a notice to end tenancy, to cancel a notice to end tenancy issued for unpaid rent, a monetary order for money owed for damage or loss under the Act and the recovery of the filing fee from the landlord.

Issues(s) to be Decided

Should the Tenant be allowed an adjournment to have a witness attend to provide evidence?

Is the Tenant entitled to cancel the notice to end tenancy?

Is the Tenant entitled to a monetary order for money owed for damage or loss under the Act?

Background and Evidence

The Tenant states that the Tenancy began on October 31, 2008. According to the Tenant, she was responsible for the payment of Utilities only. The Landlord contends that the Tenancy began on October 18, 2010, the day they took possession of the property from the previous owner. The Landlord states that rent was for \$1,000.00 payable on or before the 1st of each month. Of the deposit slips submitted to the Landlords account by the Tenant, no amounts equal to the \$1,000.00 amount set down by the Landlord as rent. Both parties agree that no written tenancy agreement was made and that everything was verbally made. No security deposit was ever paid. No Move-In Inspection Report was ever made or submitted. The Tenant has claimed \$3,000.00 that she submitted on behalf of the Landlord for the purchase tax on the property. The notice to end tenancy was sent on August 23, 2010 by registered and the Tenant acknowledged receipt in their 6 page letter attached to their application to cancel

the notice to end tenancy on August 25, 2010. The Landlord contends that there are arrears amounting to \$5,072.00. The schedule of rental payments due and received created by the Landlord states arrears by the Tenant to be \$7,692.00. The Tenant did not provide the Landlords with a copy of their supplemental evidence package received by the Residential Tenancy Branch on September 21, 2010, specifically a statement with a copy of a hand written statement by one of the Landlords. Since the evidence was not properly served on the Landlord, I cannot give any weight to the letter. The Tenant has stated that she had additional evidence by way of a 3rd party witness who she states was a separate tenant with a verbal agreement with the Landlord. The Tenant has applied for an adjournment to allow for the appearance of this witness. According to the Tenant this 3rd party witness had no written tenancy agreement. The Landlord has made an oral request for an order of possession during the hearing.

Analysis

Parties are responsible for having their witnesses available in-person or by way of conference call for the dispute resolution hearing. In any event, the evidence that would likely be offered by this individual would not provide any substantive evidence for the Tenant, as the Landlord disputes that the witnesses tenancy ever existed and the only Tenancy they have ever authorized was with the Tenant named here. As such, I dismiss the Tenant's application for an adjournment for the attendance of this witness.

I find that the Tenant has not established that she is entitled to a monetary order of \$3,000.00 for reimbursement of the purchase tax of the property. No evidence, oral or by documents were ever submitted for this hearing that showed she had authorization by the Landlord for payments made on behalf of the Landlord or that she made any such payments and was entitled to reimbursement. I dismiss the Tenant's monetary claim for lack of evidence.

I find that the Landlord has not provided evidence in their 10 day notice to end tenancy for rent arrears. I note a difference of \$2,620.00 between the notice to end tenancy,

rent arrears and the Landlord's schedule of rental payments by the Tenant. Neither the Landlord or the Tenant has addressed these amounts or the difference in them. I find that the Landlord has failed to prove the amount of rent owing or that any rent was owing at the time the notice to end tenancy was served. As such, I am dismissing the Landlord's oral request for an order of possession. The application to cancel the notice to end tenancy is granted.

I find that the Tenant has not been successful in her claim for an application to allow for more time to make an application to cancel a notice to tenancy or for a monetary order. The Tenant has been substantially unsuccessful in her claims and as such I find that she will bear the costs of her application.

Conclusion

The Tenant is successful in her application to cancel a notice to end the tenancy and the effect of this decision is the tenancy will continue.

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*.