



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

For the tenant – CNC, MNDC, RP, PSF, FF

For the landlord - OPC

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together. The tenant seeks a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (Act), regulations or tenancy agreement and to recover her filing fee. At the outset of the hearing the tenant stated she would be moving out of the rental unit over the next two days and therefore she withdraws her application to cancel the Notice to End Tenancy, and for an Order for the landlords to make repairs and to provide services or facilities required by law. The landlords seek an Order of Possession for cause.

The tenant served the landlords by registered mail on October 08, 2010 with a copy of the application and a Notice of the Hearing. The landlords served the tenant by registered mail on October 12, 2010 with a copy of the Application and Notice of Hearing. I find that both parties were properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?



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- Are the landlords entitled to an Order of Possession for cause?

Background and Evidence

Both parties agree that this tenancy started on May 12, 2004 and a new agreement was entered into for a fixed term tenancy on March 01, 2005. At the end of this fixed term the tenancy reverted to a month to month tenancy. The landlord holds \$475.00 as a security deposit from the tenant which was paid on May 05, 2004.

The landlords testify that the tenant rented the whole house with her daughter and both tenants signed the tenancy agreement which shows that rent for the house was \$950.00 this rent increased to \$1,100.00 on July 01, 2010. The landlords state they served the tenant with a One Month Notice to End Tenancy for cause on September 26, 2010 with an effective date to end the tenancy as of October 31, 2010. The reason given on the One Month Notice is that the tenant is repeatedly late paying rent. The landlords have provided copies of bank statements which show that this year alone the tenant has been late with her rent on seven occasions and has not paid rent for November, 2010. The landlords seek an Order of possession based on this Notice.

The tenant had applied to dispute the Notice but withdraw this application at the start of the hearing as she is moving from the rental unit.

The tenant states the landlord has turned off the heat to the rental unit. She claims that she rents the basement section of the house and her daughter rented the upper section. Her daughter moved out in August, 2010. The tenant claims the landlords turned off her heat on October 07 or 08 and it was turned back on again by a realtor on October 17, 2010. The tenant claims the realtor told her the landlord had turned the heat off and she was instructed to turn it back on again. The tenant states she does not have access to the upper floor of the house. The tenant seeks compensation of \$1,200.00 as she states she had to turn her electric stove on and use three heaters to heat the house. She states this will increase her Hydro bill. She also states she is unsure what her bill will be increased to as she has not yet received her Hydro bill.



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The landlord states the tenant rented the whole house with her daughter and if they agreed to separate the two units it was not a separate agreement with the landlord. The landlord's state they did not turn off the heat and had left the thermostat set at 20 degrees to heat the whole house even after the tenants' daughter moved out and the top unit was empty. The landlord's state they do not know who turned the heat off but state the tenant did have access to the upper floors as she would go up and open the windows.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. From the evidence presented by the landlord concerning late payments of rent I find the landlords have established their claim for an Order of Possession. Section 26 of the Act says a tenant must pay rent on the day it is due and she has clearly not done so on at least seven occasions during 2010. Consequently, I find the landlords are entitled to an Order of Possession pursuant to section 55 of the *Act*.

With regard to the tenants claim for a monetary order for compensation for a higher Hydro bill due to the landlords allegedly turning off her heat; In this matter the burden of proof falls to the tenant to show the heat had been turned off by the landlords and if so what her additional Hydro charges would be for this seven day period. It is my decision that the tenant has not met the burden of proof in this matter. She has provided no corroborating evidence to support her allegations that the landlords were responsible for turning of her heat and no evidence to show what if any her additional costs would be. Consequently, I find this section of the tenants claim is dismissed.

As the tenant has been unsuccessful with her claim she must bear the cost of filing her own application.

Conclusion

The One Month Notice to End Tenancy for Cause will remain in force and effect.



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I HEREBY ISSUE an Order of Possession in favour of the landlord 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.

The tenants' application is dismissed in its entirety without leave to reapply.

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 05, 2010.

Dispute Resolution Officer