



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, OPL, OPB, MND, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened in response to an Application for Dispute Resolution filed by the landlord seeking:

1. An Order of Possession for unpaid rent;
2. An Order of Possession for landlord's use of rental property;
3. An Order of Possession for breach of a material term of the tenancy agreement;
4. A monetary Order for damage to the rental unit;
5. A monetary Order for unpaid rent;
6. An Order allowing the landlord to retain the security deposit;
7. A monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and
8. An Order allowing the landlord to recover the filing fee paid for the cost of this application.

The total sum claimed in the landlord's application for dispute resolution is \$4,566.42.

The landlord and the male tenant, CJEC appeared at the hearing of this matter and gave evidence under oath.

The landlord testified that she served a Notice to End Tenancy for unpaid rent on the female tenant MKW by leaving a copy of the Notice with her in person on August 30, 2010.

Although the landlord has applied for Orders of Possession based on Notices to End Tenancy for Landlord's Use of the rental property and for breach of a material term of the tenancy agreement, the landlord testified that she has not served these notices. The Landlord's applications for Orders of Possession based on either of these grounds are therefore dismissed.

The landlord testified that she did issue a 10 day Notice to End Tenancy for Unpaid Rent or Utilities on August 30, 2010 seeking \$900.00. As to service of that Notice the landlord notes in her Application for Dispute Resolution and in a notation on a copy of the Notice itself that it was served in person on the female tenant, MKW, on August 30, 2010. Under Section 88(e) the *Residential Tenancy Act* allows a Notice to End Tenancy to be served on all tenants by leaving a copy at the person's residence with an adult who apparently resides with the person. I am therefore satisfied that both tenants have been served with the 10 day Notice to End Tenancy for unpaid rent.

The female tenant did not appear at the hearing. The landlord testified that the Application for Dispute Resolution hearing package was served on October 14, 2010 by way of personal service on the female tenant, MKW. The landlord testified that her husband effected service. The landlord's husband did not appear at the hearing to give sworn testimony as to service and sworn Affidavit materials were not tendered in evidence. I am not satisfied that the female tenant has had proper notice of the claims being made against her. I therefore dismiss the application as against the female tenant MKW however I will grant the landlord liberty to reapply.

The male tenant CJEC did appear at the hearing. The landlord testified that she served the male tenant with the Application for Dispute Resolution hearing package on the male tenant CJEC by sending it to him by registered mail which is an approved method of service as allowed under the *Residential Tenancy Act* and I am therefore satisfied that he has had notice of the claims being made against him.

Issues(s) to be Decided

With respect to the claims against the male tenant, has the landlord met the burden of proving that she is entitled to the Orders sought?

Background and Evidence

The landlord testified that this tenancy began on February 1, 2010. Rent was fixed at \$900.00 per month. The landlord testified that on January 20, 2010 the tenants paid a security deposit of \$450.00 and a pet deposit of \$100.00 for a total of \$550.00. A written tenancy agreement was not submitted in evidence.

The landlord testified that the rent cheque for August 2010 was returned because a stop payment had been placed on the cheque. The landlord testified that she served a 10 day Notice to End Tenancy seeking the \$900.00 August rent on August 30, 2010. The landlord testified that in addition to August rent she is now seeking rental arrears for September and October. In addition she is seeking late payment fees pursuant to the tenancy agreement in the sum of \$5.00 per day. In addition, in her written submissions the landlord submits that she seeks the sum of \$20.00 "...as per rental agreement part 7..." which sum is a service charge the landlord levies for cheques returned due to due to non-sufficient funds. The landlord seeks rent for October because the tenants vacated without giving any notice.

While the landlord testified that no rent was paid for either of August, September or October, in her written submissions the landlord states that the tenants paid \$300.00 towards the August rental arrears on September 16, 2010. Further, rather than no rent being paid since August her written submissions say:

Tenant has been living in the house with out paying rent since Oct 1 2010. Oct rent \$900.00 discussion with tenancy act assume trial end of Nov nov rent \$900.00 total rent arrears \$2,400.00

(reproduced as written)

The landlord changed her testimony to say that she had actually received \$900.00 for September's rent. However she maintains she still had only received \$300.00 for August rent because she did not apply any of the rent received for September to the August arrears of \$600.00. Further the landlord testified that she received no rent at all for October, 2010.

In addition to rental arrears the landlord also claims the costs of a water bill in the sum of \$386.42 up to September 30, 2010 and projected costs of \$110.00 for the period October to November.

In her application, the landlord submits she is seeking \$2,966.42 for rental arrears and water billings as well as:

Garbage Clean Up 1-800-Got-Junk	\$400.00
Carpets Cleaned	200.00
House Cleaned	250.00
Yard Clean Up	250.00
Repairs	500.00
Total clean-up and repairs	\$1600.00

The landlord did not submit receipts with respect to above-listed clean-up costs and repairs. At the hearing the landlord testified that she did not have receipts because when she was making her claim she had no idea what it would cost to repair and clean the rental unit. Further the landlord testified that she had no idea that she would be required to provide invoices or other evidence to support the claim for repairs or cleaning costs. The landlord argued that if the Dispute Resolution Officer would not allow this claim due to the lack of evidence provided at this time then she would make another claim for these sums and supply the appropriate evidence at the new hearing.

The tenant disputed the amounts sought for cleaning and repairs. The tenant testified that he did not receive any evidence respecting these claims from the landlord and he has no idea about any cleaning or damage repair needing to be done.

The landlord reiterated that she would bring another claim if she was unsuccessful at this time. When the landlord was cautioned that a party can only bring a claim once, the landlord responded that there was nothing in the Tenancy Act that said she could not bring her claim again and she would therefore bring another claim if she wished to do so.

The tenant testified that he and the female tenant ran into financial problems and they met with the landlords in August to explain that they would have to end the month-to-month tenancy. The tenant says they entered into a verbal agreement with the landlords to end the tenancy. The tenant testified that they paid \$300.00 towards August rent and agreed that the landlord could retain their security and pet deposits totalling \$600.00 this would make a total of \$900.00 rental payment to cover all of August rent. In addition the tenants say they paid their rent in full for September. The tenant testified that he all rents were paid up and all had been settled between them and the landlord and the tenancy would come to an end on September 30, 2010. The tenant testified that when they made September's rent payment the landlord said "You guys are all paid up and I want you out of here". The tenant testified that, pursuant to a court order, it was necessary for him to vacate right away and he did so on September 13, 2010.

The landlord disagreed saying the tenant has been returning to the rental property to be with the female tenant. The tenant responded that he has been paying rent at another premises since September 13, 2010 and he has not been living in the rental unit since that date.

The landlord disagreed with the amount of pet and security deposits. She says they totalled \$550.00 not \$600.00. The tenant testified that he believed they totalled

\$600.00. The tenant testified that if the deposits were only \$550.00 then he would agree that he owes the landlord \$50.00 but nothing more as all rents were paid up to the end of the tenancy on September 30, 2010, the agreed upon end date of the tenancy.

Analysis

The evidence shows that the landlord issued a 10 day Notice to End Tenancy on August 30, 2010 for unpaid of \$900.00 for August. The tenants later paid \$300.00 towards those arrears. The landlord testified that no rent was paid for September at all. However, in her written submissions she states that rent had been unpaid since October. Also, while the landlord says the tenants vacated without giving proper notice the documentary evidence, being the 10 day Notice to End Tenancy, shows that the landlord ended this tenancy on September 13, 2010. This remains true even though the this tenant has testified he did not receive that Notice and this is because I have found that it was duly deemed served upon both tenants by service upon the female tenant.

With respect to the rents owing the tenant testified that he and the female tenant ran into financial problems and they met with the landlord with a view to ending the tenancy and resolving the rental arrear problems. The tenant testified that the agreement was that the tenants paid \$300.00 cash towards the August rental arrears. To retire the rest of the \$600.00 in August rental arrears they allowed the landlord to retain the \$600.00 security and pet deposits. These payments retired the August arrears. The tenant testified that September's rent was paid and the tenants were to vacate at the end of September although this tenant vacated on September 13, 2010 as required by a Court Order.

With respect to the amount of the deposits, the landlord testified that the deposits actually totalled only \$550.00, however she did not produce evidence, such as a tenancy agreement, to prove what had been paid the tenant testified that he believed the deposits totalled \$600.00 not \$550.00.

The testimony of the landlord and the tenant are conflicting. The onus or burden of proof is on the party making the claim. When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails. I find this to be the case in this instance. The landlord's claims for rent are therefore dismissed.

With respect to the Order of Possession the tenant testified that he does not live in the rental unit and has not done so since September 13, 2010. Overall I have found the tenant's testimony to be consistent and straightforward. I therefore prefer his testimony and find that the tenant vacated the rental unit on September 13, 2020 and an Order of Possession against him is not necessary and is dismissed.

With respect to her claims for recovery of costs for utilities, the landlord has not submitted a copy of the written tenancy agreement or other evidence to show that the tenants agreed to pay utilities; nor has she submitted invoices or other documentation to show the costs of those utilities. I therefore dismiss the landlord's claim for utilities.

While the landlord claims a monetary award for money owed or compensation for damage or loss in the sum of \$1,600.00. While the landlord testified that she does have photographic evidence and invoices, she has not supplied them at this hearing nor has she served copies of this evidence on the tenant. I therefore find that the landlord has not met the burden of proving this portion of her claim. The claim for these damages is also dismissed.

Conclusion

The landlord's claim is dismissed in its entirety. As the landlord has been entirely unsuccessful in this matter, her claim for recovery of the filing fees is also dismissed.
