



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNR, OPR, OPB, MNR, MNSD, FF

Introduction

This was the hearing of applications by the tenant and by the landlord. The tenant applied to cancel a 10 day Notice to End Tenancy for unpaid rent. She claimed various credits to set-off against rent. The landlord applied for an order for possession and a monetary order. The hearing was conducted by conference call. The tenant and the landlord's representative called in and participated in the hearing.

Issues(s) to be Decided

Should the Notice to End Tenancy be cancelled?

Is the landlord entitled to an order for possession?

Is the landlord entitled to a monetary order and if so, in what amount?

Background and Evidence

The rental unit is a suite in the lower part of a house. Monthly rent is \$875.00. The tenant paid a security deposit of \$437.50 on September 30, 2009. The parties disagree as to the date that the tenancy commenced. The tenant testified that the tenancy was to commence on September 15, 2009. She said that she gave the landlord a cheque in the amount of \$437.50 for rent from September 15, 2009 to September 30, 2009 and her mother gave the landlord a cheque in the amount of \$875.00 for October rent and a cheque for \$437.50 as a security deposit.

The tenant testified that she was not able to move into the rental unit until November, 2009 because the suite was not ready for possession until then.

The landlord testified that the tenancy began October 1, 2010. She produced copies of cheques from the tenant's mother; one dated September 30, 2009 in the amount of \$875.00 and noted to be for October rent and a second in the amount of \$437.50, also dated September 30, 2009 and noted to be a damage deposit. The landlord said that she did not receive any payment from the tenant for rent for the month of September, 2010 and she denied that the tenant gave her a cheque for rent from September 15, 2009 to September 30, 2009. The tenant did not produce a copy of the cheque and did not provide any bank records to show that such a cheque was cashed.

The landlord produced a copy of the tenancy agreement. The agreement was signed by the tenant and dated October 6, 2009. The agreement provided that the tenancy would commence November 1, 2009 for a fixed term ending October 31, 2010. The agreement provided that at the end of the term the tenancy would end and the tenant must move out of the rental unit. The tenant initialled the provision requiring her to move out at the end of the term. According to the tenancy agreement utilities are not included in the rent, but the agreement does not specify what amount should be paid or to whom. According to the landlord the tenant was supposed to pay \$40.00 per month for electricity and \$40.00 per month for gas to the upstairs tenant. She produced a statement from the upstairs tenant wherein he said that the tenant's share of utilities for 13 months amounts to \$1,040.00; she has paid \$439.00, leaving a balance due of \$601.00. The tenant said she has not been shown bill for the utilities and said the upstairs tenant was overcharging her for utilities.

The landlord testified that the agreement actually began October 1, 2009 and was dated November 1, 2009 by mistake. She produced copies of e-mail communications from the tenant that showed the tenant to have occupied the rental unit at least by October 5, 2009.

The tenant complained that there was a power failure at the rental property and the landlord failed to have electrical repairs done promptly. She claimed to have lost food valued at \$700.00 and she said that her son stayed with her parents who lived nearby. She said that she spent part of her time at the rental unit: "protecting my suite" and the

rest of her time at her parents' home. The tenant said the power outage was intermittent and affected different parts of the house at different times over a nine day period until it was finally repaired. The tenant claimed payment of prorated rent for nine days at \$28.22 per day for a total of \$253.98.

The tenant complained that the upstairs tenant committed a break and entry into her suite on several occasions and stole \$1,000.00 cash belonging to her son and \$200.00 from the tenant. The tenant claimed that the landlord gave the upstairs tenant the keys to her suite and she should be responsible for the loss. She said that she reported the matter to the police, but she provided no documents to confirm her statement.

The landlord denied that she gave keys to the rental unit to the upstairs tenant. She produced copies of invoices from the electrical company called to investigate the power supply to the rental property. The invoices showed that the landlord arranged for an after-hours attendance by the electrician, contrary to the tenant's evidence that she refused to pay for such a call. She said the electrical work was delayed because the tenant told the electrician that she would be home to allow access to the unit, but when he attended she was not at home.

The landlord testified that the tenant paid only \$115.00 rent for the month of March, 2010 and has not paid any amounts for rent for the months of September, October or November, 2010. The tenant has not moved out of the rental unit despite giving notice to the landlord and despite the provisions of the tenancy agreement that required her to move out on October 31, 2010. She claimed that the tenant failed to pay utilities to the upstairs tenant as required and the sum of \$601.00 is owing for utilities.

Analysis and conclusion

The tenancy agreement was for a fixed term ending October 31, 2010. The tenant was required to move out at the end of the term and she has not done so despite the fact that on August 10, 2010 she gave the landlord a written notice confirming the October 31st end of tenancy. Further the tenant has not paid rent for the past three months and has not proven any grounds upon which the Notice to End Tenancy for unpaid rent

dated September 24, 2010 should be set aside. I find that the landlord is entitled to an order for possession effective two days after service on the tenant. This order may be registered in the Supreme Court and enforced as an order of that court.

Although the tenant did not specify a monetary amount that she claimed in her application, the tenant alleged that amounts should be set-off against rent due to the landlord, leaving a balance owing to the tenant.

The tenant has not provided documentary proof to substantiate her claims, such as her claim that she paid the landlord \$437.50 by cheque for rent for two weeks in September, 2009. I accept and prefer the landlord's evidence with respect to the payment of rent because it is consistent with the documents that show the tenant moved into the rental unit in early October, 2009. The landlord produced copies of cheques showing payment of a security deposit and first month's rent from the tenant's mother on September 30, 2009. This is consistent with the landlord's evidence.

The tenant alleged that the upstairs tenant stole substantial sums of money from her unit. She has not provided any supporting evidence to establish the loss, not even from her son who supposedly lost \$1,000.00. There is no police report, and no evidence from the individuals who supposedly gave her son \$2,000.00 for his birthday; I did not find the tenant's testimony with respect to the theft to be believable and I deny these claims.

The tenant claimed that she lost \$700.00 worth of food due to a power failure. The tenant did not produce any evidence such as purchase receipts to substantiate the loss and there is no evidence to show that the landlord's negligence was responsible for the loss. Without proof that the landlord's negligence was responsible for the loss the landlord is not liable for the tenant's claimed loss of food. I note also that the tenant testified that the rental unit is a short distance from her parents' house yet she apparently made no effort to take food to be stored in her parents' refrigerator or freezer.

The tenant paid utilities from time to time in the agreed amounts, but then stopped paying them. I find that the agreement with respect to utilities is as stated by the landlord, namely: that the tenant was responsible for paying \$80.00 per month on account of the gas and electric bills. The tenant testified that the rental unit was uninhabitable for nine days due to the power outage, and her son went to stay with her parents while she stayed behind to “protect” the suite. The tenant said in her evidence that the power outages were intermittent, affected different areas of the rental property and lasted for several hours at a time. If I accept her testimony as accurate then she did not entirely lose the use of the rental unit for nine days. I find that the tenant should be granted some compensation for her loss of quiet enjoyment; I allow the sum of \$127.00, being 50% of the prorated rent for the nine day period. In all other respects the tenant’s claims are dismissed.

I accept the landlord’s evidence that only \$115.00 was paid as rent for March, leaving a balance of \$760.00. No rent has been paid for September, October or November. I find that the landlord is entitled to an award of \$3,385.00 for unpaid rent. I allow the landlord’s claim for utilities in the amount of \$601.00. the landlord is entitled to recover the \$50.00 filing fee for her application, but not the amount paid to sign a letter. The total amount awarded is the sum of \$4,036.00. From that I deduct the sum of \$127.50, for a total award to the landlord of \$3,909.00. I order that the landlord retain the security deposit of \$437.50 in partial satisfaction of the award and I grant the landlord an order under section 67 for the balance of \$3,471.50. This order may be registered in the Small Claims Court and enforced as an order of that court.

Dated: November 04, 2010.
