



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession and a monetary order. Both parties participated in the conference call hearing.

Issues to be Decided

Is the landlord entitled to a monetary order as claimed?
Is the landlord entitled to an order of possession?

Background and Evidence

The parties agreed that on or about January 10, 2011, they signed a tenancy agreement. A copy of the tenancy agreement was not entered into evidence. The tenant claimed that the tenancy agreement provided that utilities were included in the rent. The landlord did not dispute this claim. The parties seemed to agree that at some point after the tenancy agreement was signed, the landlord asked the tenant to transfer utilities into her own name and pay for them. The landlord insisted that this was part of the original agreement. The tenant claimed that she at no time agreed to pay for utilities, but at one point attempted to put the accounts into her own name because the landlord was so persistent.

On February 16, 2011 a hearing was held to address an application by the tenant for an order setting aside a notice to end tenancy. In a decision of the same date, Dispute Resolution Officer (DRO) found that the tenant was not obligated to pay rent for the month of January and that she was only required to pay \$500.00 per month in rent. The DRO made no finding with respect to whether the tenant was obligated to pay utilities.

The landlord testified that the tenant had failed to pay \$250.00 in rent which was owing for January and had not paid rent in February, March or April nor had she paid for utilities during the tenancy. The landlord further testified that on March 17 she posted a notice to end tenancy to the tenant's door.

The tenant testified that she did not believe she had received the notice to end tenancy, although she had received approximately 5 others in February and March. The tenant claimed that she paid her rent to the landlord in cash by leaving it in the landlord's mailbox. She stated that her February rent was paid on February 17 because she wanted to wait until after the February 16 hearing before paying so she would know whether her tenancy would be continuing. She further testified that her March rent was paid on March 1. At the hearing, the tenant indicated that she had bank records which proved that she had withdrawn cash on the dates in question. I asked the tenant to provide copies of her bank statements by the end of the business day on April 28 and she complied, providing statements for the months of February and March. The statements confirmed that \$500.00 withdrawals had been made on February 17 and March 1.

The landlord denied having received any money.

Analysis

The landlord bears the burden of proving her claim on the balance of probabilities. I accept that the tenant received the notice to end tenancy as she acknowledged having received several. Although she did not dispute the notice, if there were no arrears owing at the time, it would not have been necessary for her to dispute the notice.

The DRO's decision of February 16, 2011 determined that no rent was payable for the month of January and I therefore dismiss that claim. As the dates of \$500.00 withdrawals on the tenant's bank statement exactly match the dates on which she claimed she paid her rent in cash, I find it more likely than not that those withdrawals were made to pay rent. I find that the tenant paid rent in full in the months of February and March and I therefore dismiss the landlord's claim for an order of possession and for a monetary order for unpaid rent for those months. The tenant indicated that her April bank statement was unavailable and therefore she could not prove payment of April's rent. I dismiss the landlord's claim for April's rent with leave to reapply.

I find that the landlord has failed to prove that the tenant was contractually responsible to pay for utilities and I therefore dismiss her claim for unpaid utilities.

Conclusion

The landlord's claim is dismissed in its entirety. 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*.

Dated: April 29, 2011

Residential Tenancy Branch