



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes Landlord: OPR, OPB, MNR, FF
Tenant: CNR, O, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order and the tenant sought to cancel a notice to end tenancy.

The hearing was conducted via teleconference with the landlord and the tenant both in attendance.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent and utilities; to a monetary order for unpaid rent and utilities; and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 55, 67, and 72 of the *Residential Tenancy Act* (Act).

It must also be decided if the tenant is entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 67, and 72 of the Act.

Background and Evidence

The tenancy began in December 2010 for a monthly rent of \$900.00. As the landlord was unavailable at the time of the start of the tenancy the upstairs tenant arranged the tenancy on behalf of the landlord.

The landlord testified that she thought the upstairs tenant provided all the details to the tenant regarding the amount of rent and security deposit and the fact that the tenant would be responsible for ½ of the utilities charged to the residential property.

The tenant testified that because the rental unit required so much cleaning from the recent renovations the upstairs tenant told her the landlord would waive the security deposit. The landlord testified that she had been unaware of any problems with the condition of the rental unit when the tenant moved in.

The landlord testified that she was not able to meet with the tenant until February 5, 2011 to sign the tenancy agreement and at that time they discussed the security deposit and utilities. The landlord states the tenant told her that she did not, at that time, have the funds for utilities and a security deposit but that she would in mid March 2011.

The landlord testified that she made arrangements to meet the tenant in mid March 2011 but when she went to meet with her the tenant was not there but had left a letter for the landlord. The tenant states that in that letter she had included a cheque for the utilities owed to that point in the amount of \$151.02.

The landlord testified there was no cheque in the letter from the tenant. The tenant confirmed the cheque has not been cashed through her bank account at the time of this hearing.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities on March 18, 2011 with an effective date of March 29, 2011 citing the tenant had failed to pay a security deposit of \$450.00 and utilities in the amount of \$204.00 following a written demand on February 5, 2011.

The tenant submitted into evidence a copy of her notice to the landlord that she intends to end the tenancy by vacating the rental unit effective April 30, 2011.

Analysis

Section 46 of the *Act* allows a landlord to end a tenancy, if the tenant has failed to pay rent on any day after the rent is due and/or if the tenant has failed to pay utilities 30 days after the landlord has issued a letter demanding payment of the amount owed.

As the landlord issued the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities because the tenant had failed to pay a security deposit and utilities and not rent, I find the notice issued by the landlord to be ineffective; I therefore dismiss the landlord's Application for an order of possession and grant the tenant's Application to cancel this notice.

Section 17 of the *Act* stipulates that a landlord may require, as a condition of entering into a tenancy agreement, the tenant to pay a security deposit and Section 20 states that a landlord must not require a security deposit at any time other than when the landlord and tenant enter into the tenancy agreement.

As a result, I find the landlord failed to require a security deposit at the time the tenancy was entered into and cannot now require the tenant to pay a security deposit, as such, I dismiss this portion of the landlord's Application.

As per the tenant's testimony, she accepts that she owes the landlord the amount noted for utilities and in absence of proof of the landlord's receipt of a cheque in the amount of

\$151.02, I order the tenant to place a stop payment on that cheque issued and find the tenant is responsible to pay the landlord utilities.

As both parties were at least partially successful in their applications I find each is entitled to recovery of their respective filing fees.

Conclusion

I find that the landlord is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$204.00** comprised of utilities owed; plus the landlord's filing fee of \$50.00 less the tenant's filing fee of \$50.00.

This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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 12, 2011.

Residential Tenancy Branch