



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, ERP, RP, RR, OPR, MNR, MNDC, FF

Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

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.

Tenants application

First of all it is my decision that I will not deal with all the issues that the tenant has put on the application. For claims to be combined on an application they must related.

Not all the claims on this application are sufficiently related to the main issue to be dealt with together.

I therefore will deal with request to cancel a Notice to End Tenancy and I dismiss the remaining claims with liberty to re-apply.

Landlords application

The landlord's application is a request for an Order of Possession based on the Notice to End Tenancy for non-payment her rent, a request for a monetary order for outstanding rent, and a request to recover the filing fee.

Background and Evidence

July 8, 2011 the tenant was served with the Notice to End Tenancy for non-payment of July rent in the amount of \$850.00.

The landlord testified that:

- The tenant moved in April of 2011 however at the time she did not have any money and so the landlord agreed to allow her a short amount of time to pay the rent, she never agreed that the tenant did not have to pay rent for the month of April.
- The tenant did not pay the April rent until May of 2011, and then she only paid \$600.00 of the \$850.00 rent.
- Since the tenant had informed her that the rental unit was in need of significant amount of cleaning at the beginning of the tenancy she agreed to accept the \$600.00 as full rent for the month of April, and did not go after the remaining \$250.00.
- Since then the tenant has been a one month behind in the rent, as the May 2011 rent was not paid until June 2011, the June 2011 rent was not paid until July 2011, and the July 2011 and August 2011 rent have never been paid.
- Since the tenant was not keeping her promise to catch up on the rent she decided to serve a Notice to End Tenancy and did so on July 8, 2011.
- The tenant has not complied with the Notice to End Tenancy and now there is two full months' rent outstanding.

The landlord is therefore requesting an Order of Possession for as soon as possible and is requesting a monetary order for the outstanding rent of \$1700.00 and recovery of the \$50.00 filing fee.

The tenant testified that:

- When she moved into the rental unit she found the rental unit in extremely dirty condition and in need of repairs.
- The rental unit was in such bad condition that she had to stay in a motel and spend two full days cleaning the rental unit.
- Because of the condition in which the unit was left she decided to withhold the rent for the month of April 2011 and told the landlord she was doing so.
- She therefore does not believe that she owed any money for April 2011.
- She paid \$600.00 for May 2011 and agrees that she was \$250.00 short on the rent.
- She paid the full \$850.00 rent for June 2011 and the full \$850.00 rent for July 2011.
- She has not paid any rent for August 2011 because the landlord is refusing to do repairs that are required in the rental unit.

The tenant therefore believes that the Notice to End Tenancy should be cancelled and that this tenancy should continue.

Analysis

It is my finding that the tenant has withheld rent without having the authority to do so, and at this time there is two months' rent totalling \$1700.00 outstanding.

The tenant claims that the landlord agreed that she did not have to pay any rent for the month of April 2011 due to the condition in which the rental unit was left; however the landlord denies ever making such an agreement, and since the burden of proving a claim lies with the person making the claim is my decision that the tenant has not met

the burden of proving that the landlord agreed to allow her to pay no rent for the month of April 2011.

Therefore, since the landlord has agreed to allow deduction from the rent in the amount of \$250.00 for the tenants time for doing cleaning, at this time there is still \$1700.00 outstanding.

I therefore will not set aside the Notice to End Tenancy, and have issued an order possession to the landlord.

I also allow the landlords monetary claim and have ordered recovery of the filing fee paid by the landlord.

Conclusion

The tenant's application to cancel the 10 day Notice to End Tenancy is dismissed in full without leave to reapply.

I have issued an Order of Possession to the landlord that is enforceable two days after service on the tenant.

I have issued a monetary order in favour of the landlord in the amount of \$1750.00.

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: August 10, 2011.

Residential Tenancy Branch