



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNR, MNSD, OPR

Introduction

Some documentary 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 is a request for an Order of Possession based on a Notice to End Tenancy for non-payment of rent, a request for a monetary order for \$1300.00, and a request for recovery of the \$50.00 filing fee.

Background and Evidence

The applicant testified that:

- The tenant no longer owes any rent, because the outstanding \$300.00 rent was paid, and the tenant has also deposited the \$1000.00 November 2011 rent.
- The tenant does however still owe \$504.46 in outstanding utilities.
- The tenant had agreed to pay one third of all utilities.
- There is no written tenancy agreement, the agreement was verbal.

The applicant is therefore requesting an Order of Possession for as soon as possible and an order for the outstanding utilities and filing fee totalling \$554.46.

The agent for the respondent testified that:

- There is no rent outstanding as the full November rent of \$1000.00 was deposited in the landlords account on November 9, 2011.

- There are no utilities outstanding, as the verbal agreement was that the tenant would pay \$100.00 per month for utilities, and he has paid more than that amount.

Analysis

I am not willing to issue an order possession based on the Notice to End Tenancy that was served on the tenant, because the landlord has collected November 2011 rent and has thereby reinstated the tenancy and can no longer rely on the Notice to End Tenancy that was served on October 2, 2011.

I also deny the claim for outstanding utilities. The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met.

In this case the landlord has not met the burden of proving that the tenant was to pay one third of all utilities. There is no written tenancy agreement and the tenant claims that the landlord agreed to \$100.00 per month for utilities.

In the absence of a written tenancy agreement it is just the landlord's word against that of the tenant and it is my decision that that is not sufficient to meet the burden of proving that the tenant was to pay one third of the utilities.

Conclusion

This application is dismissed in full without leave to reapply.

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: November 21, 2011.

Residential Tenancy Branch