

DECISION

Dispute Codes OPR, MNR, MND

Introduction

This is an application filed by the Landlord for an order of possession and a monetary order for unpaid rent and for damage to the rental unit.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended the hearing and have acknowledged receiving the 1 evidence package submitted by the other party, I am satisfied that both parties have been properly served with the notice of hearing and evidence under the Act.

It was clarified by the Landlord at the outset of the hearing that an order of possession was not required. In a Direct Request Application for Residential Tenancy Branch File No. 766855 a decision was reached and an order of possession and a monetary order was ordered as a result of 10 day notice for unpaid rent for January of 2011. As a decision has already been reached for these two aspects of the Landlord's claim, I refuse jurisdiction for the order of possession and the monetary order for rent of January 2011. This leaves the Landlord's claim to unpaid rent of December 2010 and February 2011 and the utilities for those months.

The Landlord seeks an adjournment to file late evidence in support of his claim. The Tenant disputes this. I deny the Landlord's application to adjourn this hearing for the filing of late evidence as the Landlord has failed to follow the rules of procedure. The hearing shall continue based upon direct testimony.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order for unpaid rent and utilities for December 2010 and February 2012?

Background and Evidence

Both parties agreed that the Tenancy ended near the end of January of 2011. The Landlord states that he regained possession on January 30, 2011, but the Tenant disputes this stating that possession was returned to the Landlord on January 19, 2011.

Both parties agreed that the monthly rent was \$1,250.00 per month. The Landlord states that the Tenant failed to pay rent and utilities for December 2010 and February 2011. The Tenant disputes this stating that there was a verbal agreement for work in lieu of rent. The Landlord disputes this. Both parties agreed that a signed tenancy agreement was made, but neither party has submitted a copy. The Landlord states that he was able to re-rent the property on February 15, 2011.

Analysis

As explained to the parties at during the hearing the onus or burden of proof is on the party making the claim, in this case the Landlord is responsible as he has made an application. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. The Tenant has disputed the Landlord's claim of unpaid rent and utilities for December 2010 and February 2011. The Landlord has failed to provide any evidence in support of this claim. I note as well that both parties agree that possession was returned to the Landlord at the end of January 2011 and that the rental unit was re-rented for February 15, 2011 and that the Landlord has failed to provide any documentary evidence of unpaid rent or unpaid utilities. I find on a balance of probabilities that the Landlord has failed in his claim and dismiss the application without leave to reapply.

Conclusion

The Landlord's application for unpaid rent and utilities for December 2010 and February 2011 is dismissed 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: April 30, 2012.

Residential Tenancy Branch