

DECISION

Dispute Codes OPR, MNR, FF, CNR, LRE, AS

Introduction

There are applications filed by both parties. The Landlord has applied for an order of possession and a monetary order for unpaid rent and recovery of the filing fee. The Tenant has applied to cancel a notice to end tenancy issued for unpaid rent, to suspend or set conditions on the Landlord's right to enter the rental unit, to allow the Tenant to assign or sublet because the Landlord's permission has been unreasonably withheld and recovery of the filing fee.

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

Section 63 of the Act provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion between the parties at the outset of the hearing led to a resolution regarding possession. Specifically, it was agreed as follows:

Both parties agree that the Tenant shall vacate the rental unit on May 31, 2012 at or before 6:00 pm and the Landlord shall receive an order of possession to reflect this.

The above particulars comprise full and final settlement of all aspects of the dispute arising from this application for both parties for possession of the rental unit.

As both parties have resolved the issue of possession, the Tenant has withdrawn the remaining portions of her application as the tenancy is ending.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order for unpaid rent?

Background and Evidence

This Tenancy began in mid-January of 2012 on a month to month basis. The monthly rent is \$750.00 payable on the 1st of each month. Neither party has submitted a copy of the signed tenancy agreement, but agree that one exists.

The Landlord states that the Tenant was served a 10 day notice to end tenancy for unpaid rent on May 4, 2012, which the Tenant has confirmed receiving. The effective date of the notice is May 15, 2012 and it displays that rent of \$1,516.00 was due on May 1, 2012. The Landlord seeks unpaid rent for March of \$750.00 and May for \$750.00. The Tenant disputes this stating that rent was paid. The Tenant has submitted copies of 3 receipts that rent was paid. The Landlord disputes that 2 of the receipts were not issued by her. The Landlord confirms that the receipt issued for April rent is authentic, which also states, "This is for April, March has not been paid nor has Security Deposit." The Landlord states that this is the first time rent was paid in cash, so she issued a receipt. The Landlord states that rent for February was paid by cheque. The Tenant states that the rent receipt dated March 26 is for March rent paid late and that that rent was paid for May as shown on the receipt dated May 3. The Tenant states that these two rent payments were made in cash after they were withdrawn from her bank account near the end of the month. The Landlord has provided various photographs of a text conversation between the two parties. The Tenant has confirmed the content of the text messages. The Landlord refers to a text dated April 23, 2012 in which both parties. The text states, "Me. Can I pick up the March rent \$ tonight? Sandra Schmidt, Did u not get my text. I am on a course in abby til wed. Thought I'd just do it when I pay may. Me. Ok. when do you have may \$? Sorry marion I've been studying would monday be ok." The Landlord has also submitted an email from the Tenant of an attempted email money transfer on May 4, 2012 that the Tenant states that took place. The Landlord states that the money was never transferred. The Landlord has also submitted an email transfer took place on May 4, 2012 for \$10.00. The Landlord states that if the Tenant paid rent as shown on the receipt dated May 3, 2012, why would she make an attempt at paying her rent on May 4, 2012 by email transfer. The Tenant argues that she was going to pay rent in advance for June and part of July.

Analysis

The onus or burden of proof is on the party making the claim, in this case the Tenant is responsible as she has made the 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 authenticity of the receipts are being disputed by the Landlord. I find the Tenant 's direct testimony in doubt which she relies on in rebuttal. The Tenant has failed to provide any supporting evidence that the rent was paid by cash and which she was issued these two receipts. The two sets of receipt's signatures do not match nor do I find that they correspond to the copies of the Landlord's signatures a submitted in her evidence. As such, I find on a balance of probabilities that the Tenant has failed to provide sufficient evidence that the rent for March and May was paid. The Landlord has established her claim for unpaid rent of \$1,500.00. The Landlord is also entitled to recovery of the \$50.00 filing fee. The Landlord is granted a monetary order for of \$1,550.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Landlord is granted an order of possession for May 31, 2012 at or before 6:00 pm. The Landlord is granted a monetary order for \$1,550.00.

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: May 30, 2012.

Residential Tenancy Branch