

DECISION

Dispute Codes OPL, OPC, OPB, MND, MNR, MNDC, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order of Possession – Section 55;;
2. A Monetary Order for damage to the unit - Section 67;
3. A Monetary Order for unpaid utilities – Section 67;
4. A Monetary Order for compensation – Section 67; and
5. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to the monetary amounts claimed?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy began on October 1, 2012. Monthly rent of \$595.00 is currently payable on the first of each month. The Landlord collected a security deposit of \$282.50 at the onset of the tenancy.

The Landlord states that the Tenant has breached an agreement to move out of the unit on June 30, 2012. The Landlord states that this agreement is in relation to a previous Decision dated April 30, 2012 where it was determined that the tenancy ended on June 30, 2012. It is noted that the previous Decision determined that no rent was payable by the Tenant for June 2012. The Landlord states that the rent for June 2012 was paid by

a Ministry on behalf of the Tenant and that the Landlord deposited this cheque then wrote out a cheque for the refund of June 2012 rent to the local Ministry office. No evidence of this cheque being cashed by the Ministry was provided. The Tenant states that she does not know why the Ministry paid the June 2012 rent but that the Landlord should have repaid the Tenant for the June 2012 rent and not the Ministry.

The Parties agree that the Landlord accepted rent for July 2012 from the Ministry and the Landlord states that he deposited the cheque as the Tenant had not moved out of the unit. The Landlord states that he had no conversation with the Tenant about this rent payment. The Landlord states that he is not claiming any unpaid rent and only wants an Order of Possession.

The Tenant states that when the Landlord failed to return her June rental monies she had no funds to move out of the unit and when the Landlord cashed her July rent cheques, she remained in the unit as she had been informed by the Residential Tenancy Branch that she could do so.

The Parties agree that the hydro is in the Tenant's name but that the Landlord is responsible for payment if the Tenant does not pay the amount. The Landlord claims unpaid hydro of \$419.12 and the Tenant agrees that this amount is owing to hydro. The Landlord did not provide evidence of the payment of this amount to the hydro authority by the Landlord.

The Landlord states that the parties orally agreed that the Tenant could use a shed for a monthly rent of \$30.00 and that the Tenant failed to pay the amount of \$30.00 for use of a shed. The Landlord claims \$30.00. The Tenant disputes that this money is owing.

The Landlord states that he does not know if there is damage to the unit as the Tenant has not moved out of the unit. The Tenant states that the unit is not damaged.

Analysis

Where a Notice to End Tenancy has been given and the Landlord accepts rent for a period after the effective date of the Notice, the issue of whether the Landlord has reinstated the tenancy is established by evidence as to whether a receipt for the rent taken was issued for use and occupation only; whether the landlord informed the tenant that the money would be for use and occupation only; and the conduct of the parties. Given that the Landlord accepted rent for June and July 2012, did not issue a receipt to the Tenant for use and occupancy only and did not say anything to the Tenant in relation to the acceptance of that rent money and considering that the Tenant continues to reside in the unit since the Landlord took her rent money, I find that by implication, the Landlord has reinstated the tenancy. As a result, I find that the Landlord is not entitled to an Order of Possession.

In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established. Given the Tenant's evidence that no monies are owing for the shed rental and that the Landlord did not file any other evidence of non-payment, such an accounting of monies in relation to the payments for the shed, I find that the Landlord has failed to substantiate that the Tenant failed to pay for the shed rental and I dismiss this part of the application. Given that the Landlord has not provided evidence that the hydro costs being claimed by the Landlord were paid by the Landlord on behalf of the Tenant, I find that the Landlord has failed to substantiate the costs claimed and I dismiss this part of the application. Given that the tenancy has not ended, I find that the Landlord has made a claim too soon for damage to the unit and I dismiss this part of the application with leave to reapply following the end of the tenancy if the unit is left damaged.

Conclusion

The tenancy has been reinstated.

The Landlord's application is dismissed and leave to reapply is given in relation to damages to the unit following the end of the tenancy.

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: July 26, 2012.

Residential Tenancy Branch