



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FF, OPR, MNSD, 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.

The landlord's application is a request for an Order of Possession based on a Notice to End Tenancy for nonpayment of rent, a request for a Monetary Order for \$1473.16, a request for recovery of the \$50.00 filing fee, and a request to retain the full security deposit towards this claim.

The tenant's application is a request to cancel a Notice to End Tenancy that was given for nonpayment of rent, and a request for recovery of the \$50.00 filing fee.

Background and Evidence

The landlord testified that:

- It was discovered that the tenant was significantly behind in her rent payments and therefore on August 21, 2012 a 10 day Notice to End Tenancy was posted on the tenant's door.

- Some payments were made after the Notice to End Tenancy was served, plus the tenant was credited \$500.00 for lawn maintenance, and therefore at this time there is a total of \$1473.16 in outstanding rent.
- They are therefore requesting an Order of Possession for as soon as possible, and a Monetary Order for that outstanding rent.

The tenant testified that:

- She realizes now that there is some rent outstanding; however she does not believe that she owes as much as the landlords are claiming.
- First of all the landlords still owe her \$500.00 credit for lawn maintenance from 2009, which was never credited to her account.
- Secondly, at the beginning of the tenancy she was paying the water utility bill, however the landlord agreed that since she had to water such a large yard she should not have to pay that, and stopped charging her for the water utility. She therefore believes that she should be refunded the amount she had already paid totaling \$273.00.
- Therefore if you deduct the amounts that should be credited for lawn maintenance and water utilities she only owes \$700.16 and she is willing to make payments to make up the outstanding amount.

In response to the tenant's testimony the landlord testified that:

- She did not realize that the tenant had submitted invoices for lawn maintenance in 2009 and therefore they are willing to credit the tenant a further \$500.00.
- They are not willing to credit the tenant for the water utility bills she paid prior to coming to an agreement with the landlords to not pay the water utilities.
- They are not willing to accept payments, they still want an order of possession.

Analysis

It is my finding that the tenant has not met the burden of proving that there was any agreement for her to be reimbursed for water utilities she paid prior to the agreement with the landlord to stop paying those utilities. I therefore deny the tenants requested deduct that amount off the outstanding rent.

I have examined the landlord's ledger, and I find that the \$1473.16 amount of rent owed as of September 11, 2012 is accurate, except for the further \$500.00 to be credited for lawn maintenance from 2009. Therefore the total owed at this time is \$973.16.

I have therefore issued an order for the tenant to pay \$973.16 to the landlords, plus the \$50.00 filing fee for a total of \$1023.16.

The landlords have also requested an Order of Possession based on the Notice to End Tenancy that was given on August 21, 2012, however the landlords have accepted rent after that date and have not provided any evidence to show that it was accepted for use and occupancy only, and therefore they have reinstated the tenancy.

I therefore deny the request for an order of possession.

If the landlords still want to end this tenancy they will have to serve a new Notice to End Tenancy.

Conclusion

I have issued a Monetary Order in the amount of \$1023.16.

The request for an Order of Possession is dismissed.

I make no order regarding the security deposit at this time as this tenancy is continuing.

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: September 26, 2012.

Residential Tenancy Branch