



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the tenant: MNSD, RP, LRE, AAT, LAT, RR
For the landlord: OPR, MNR, FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the "Act").

The tenant applied for an order requiring the landlord to make repairs to the rental unit, for an order allowing a reduction in rent, a monetary order for money owed or compensation for damage or loss, an order authorizing the tenant to change the locks to the rental unit, an order requiring the landlord to allow access to the rental unit and an order suspending or setting conditions of the landlord's right to enter the rental unit.

The landlord applied for order of possession for the rental unit due to unpaid rent, a monetary order for unpaid rent and for recovery of the filing fee.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally, refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. I have reviewed all testimony and other evidence. However, only the evidence relevant to the issues and findings in this matter are referred to in this decision.

Issue(s) to be Decided

Is the tenant entitled to orders for the landlord and a monetary order?

Is the landlord entitled to an order of possession due to unpaid rent, a monetary order for unpaid rent and to recover the filing fee?

Background and Evidence

There is no written tenancy agreement. I heard undisputed testimony that this tenancy began on November 1, 2011, monthly rent is \$750.00, due on the first day of the month, and the tenant paid a security deposit of \$350.00 at the beginning of the tenancy.

The rental unit was in the lower suite, and the landlord and his family lived in the upper suite.

Pursuant to the Residential Tenancy Branch Rules of Procedure, the landlord proceeded first in the hearing in support of his 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice").

Landlord's application-The landlord gave evidence that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent on August 1, 2012. The landlord gave conflicting evidence of the method of service of the document; the application stated that the Notice was delivered by hand and the written evidence shows that the Notice was posted on the door.

The Notice stated the amount of unpaid rent as of August 1, 2012 was \$2670.00. This represents the amount of the landlord's monetary claim. The effective vacancy date was August 1, 2012.

The landlord said that the amount listed included unpaid rent of \$420.00 for May, and \$750.00 for June, July and August 2012, each.

When questioned, the landlord acknowledged that the tenant paid rent in cash and that he did not issue receipts for the cash payments. The landlord contended that the tenant never wanted a receipt.

I questioned the landlord's agent further about a method of record keeping, and the agent said that the rent funds were never deposited in the bank, but rather were used to pay bills. The landlord agreed that he did not have an accounting system or written records of payments.

Tenant's response-The tenant denied receiving the Notice, saying it was not posted on her door or handed to her. Additionally, the tenant said that all her rent payments were paid; however the landlord refused to give her receipts for payments despite making repeated requests. The tenant also said that the landlord demanded cash payments and would not accept cheques.

Tenant's application-The tenant's monetary claim is in the amount of \$200.00, for loss of cable service. The tenant said that cable was provided for in the tenancy agreement and that the landlord terminated that service, the value for which she estimated to be approximately \$200.00. The tenant stated that she now has satellite service.

As to the tenant's requests for orders for the landlord, the tenant stated the landlord has constantly harassed her and her children, to the point of police involvement, that the landlord and his wife have entered the rental unit without notice and when her son was home alone, and that the landlord has assaulted her ex-husband.

The tenant also contended that the landlord has blocked her and her son's access to the rental unit, requiring that the tenant call the police.

The tenant also contended that the toilet does not work properly and that the landlord and his family use the tenant's garbage bin.

When questioned, the tenant acknowledged not having issued written notices or requests to the landlord addressing her issues.

Landlord's response-The landlord denied entering the rental unit; rather the breaker to the home, located in the rental unit, was malfunctioning and the tenant refused entry.

The landlord said the tenant was the one who harassed the landlord, who is handicapped.

The landlord said that the tenant has allowed multiple unknown occupants in the rental unit and is a threat to the landlord's family.

When questioned, likewise the landlord acknowledged that no written notices have been issued to the tenant.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Landlord's application-

Order of Possession-If rent is not paid when it is due, section 46(1) of the *Act* entitles landlords to end the tenancy within 10 days if appropriate notice is given to the tenant.

In the circumstances before me, I find the landlord's Notice to be deficient and therefore unenforceable. In reaching this conclusion, I find the landlord submitted insufficient evidence that the Notice was delivered to the tenant and likewise, I find the landlord submitted insufficient evidence that the amount listed on the Notice was valid.

The landlord does not keep any accounting records nor does he issue receipts for cash payments, in violation of the Act. The tenant said that she has paid her rent in full and that the landlord refused to give her receipts.

In this case the landlord has the onus of proving, during these proceedings, that the claim is justified. When the evidence consists of conflicting and disputed verbal testimony, then the party who bears the burden of proof will not likely prevail.

Therefore, I find the 10 Day Notice to End Tenancy dated August 1, 2012, is not valid, not supported by the evidence and is of no force or effect and I hereby **dismiss** the landlord's application for an order of possession, with the effect that this tenancy continue until it otherwise ends under the Act.

I also find the landlord submitted insufficient evidence that the tenant has not paid rent and I therefore dismiss his request for a monetary order, without leave to reapply.

I also decline to award the landlord recovery of the filing fee.

Tenant's application- In a claim for damage or loss under the Act or tenancy agreement, the claiming party, the tenant in this case, has to prove, with a balance of probabilities, four different elements:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the party took reasonable measures to mitigate their loss.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

I find the tenant submitted insufficient evidence that she suffered a loss of cable service. I also find the tenant submitted insufficient evidence that the landlord harassed her, entered her rental unit, or has not made repairs.

In reaching this conclusion, I was influenced by the lack of documentary evidence. Both parties referred to police reports, yet neither party submitted any such report. I also was not provided any written notices or requests to the landlord.

If there are repairs required or if the landlord is otherwise failing to address his obligation under the Act, a tenant's remedy is to write to the landlord and advise of the required repairs or concerns. If so, there is clear evidence of what repairs and issues are required and the date on which the landlord was advised of such repairs or issues. If, after a reasonable amount of time, the repairs are not completed or the issues addressed, then the tenant's remedy is to file an Application for Dispute Resolution seeking remedy.

Due to the insufficient evidence, I find the tenant has submitted insufficient evidence to support her application and I therefore dismiss her application for orders for the landlord.

Conclusion

Due to the above, I dismiss the landlord's application, without leave to reapply.

Due to the above, I dismiss the tenant's application, without leave to reapply.

I remind each party that they have rights as well as obligations under the Residential Tenancy Act and should the parties have questions about such rights or obligations, they are advised that the legislation is available on the Residential Tenancy Branch website as well as information officers being available to assist with understanding the legislation.

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 18, 2012.

Residential Tenancy Branch