

DECISION

Dispute Codes CNC, OPT, MNDC, LRE, RR, O

This is an application filed by the Applicant to cancel a notice to end tenancy issued for cause and to obtain an order of possession for the rental unit, a monetary order request for money owed or compensation for damage or loss, to control the Landlord's right to enter and to make repairs to the rental.

Both parties attended the hearing by conference call and gave testimony. As both parties attended the hearing and have confirmed receipt of the evidence submitted by the other party, I am satisfied that both have been properly served.

At the beginning of the hearing it was clarified by both parties that the Applicant was never issued a notice to end tenancy issued for cause by the Landlord. The Landlord disputes this claim stating that the Applicant is not a Tenant and was only an occupant and that their Tenant was A.Z. which both parties have confirmed was a Tenant of the Landlord. As such, the application to cancel a notice to end tenancy for cause is dismissed. It was further clarified that she does not seek an order of possession to live at the rental unit and that this portion of the application was withdrawn. I find that as the Applicant is not seeking possession of the rental unit that the request to restrict access to the rental unit and an order for the Landlord to make repairs to the unit are dismissed as this Tenancy has ended and no further action is required for these portions of the application.

The remaining portion of the Applicant's claim is for a monetary order for money owed for personal property of \$3,299.30 that she claims was stolen by another Tenant, C.L. due to the Landlord's negligence. The Applicant states that she requested the Landlord to remove another Tenant and when they refused, the other Tenant stole her belongings. The Landlord disputes this stating that the Applicant was only an occupant and as such had no rights regarding the Tenancy. The Landlord states that the Applicant was referred to the Tenant, A.Z. to resolve the issue.

The Applicant also seeks a monetary order for loss of quiet enjoyment. The Landlord disputes the Applicants claims and reiterates that there was no tenancy and also states that the details for the application do not provide any notice of a claim for loss of quiet enjoyment. I find that the Applicant's claim for loss of quiet enjoyment was not part of the original application and that she has failed to provide sufficient details of such to give notice to the Landlord that the claim was being sought. This portion of the Applicant's claim is dismissed with leave to reapply.

The Applicant refers to a shelter information form that the Landlord has confirmed entering into with the Applicant. The Landlord stated the form was filled out in an effort to assist the Applicant from obtaining government benefits. The Applicant stated in her direct testimony that she paid her rent in cash to the Tenant, A.Z. who in turn issued a company cheque to the Landlords. The Landlords have confirmed this and reiterate that all of their dealings about rent was with the Tenant, A.Z. and that there was possibly a sub-tenancy between A.Z. and the applicant.

As explained to the parties at the outset of the hearing the onus or burden of proof is on the party making the claim, in this case the Applicant 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. On this basis, I find on a balance of probabilities that the Applicant has failed to establish that she was a Tenant. Based upon the Tenant's own direct testimony no monies were ever given to the Landlords for rent as she stated that all of her rent was delivered to the Tenant, A.Z. and that the Landlord's received a cheque from him. I find that the Applicant was an occupant and has not expectation of a tenancy agreement with the Landlord and that she should properly be seeking redress from the Tenant, A.Z. The Tenant has failed to establish that she had a Tenancy with the Landlords and that the Landlords were negligent in causing her the loss of personal property. The Landlord has stated in their direct testimony that there is personal property of the Tenants including the refrigerator awaiting the Tenant to pick them up.

Conclusion

The Application is dismissed as C.G. is an occupant and not a Tenant.

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: October 03, 2012.

Residential Tenancy Branch