



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, OPB, MNR, MND, MNSD, CNC, MNDC, AS, RR, FF

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*.

The landlord applied for an order of possession and for a monetary order for unpaid rent, utilities, cost of repairs and the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of his claim.

The tenant applied for an order to cancel the notice to end tenancy and for a monetary order for compensation. The tenant also applied for an order permitting her to sublet and to pay a reduced rent.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. This matter was initially heard on May 09, 2013 and adjourned to be heard this date. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Residential Tenancy Rules of Procedure 2.3 states that if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply.

In this regard I find the landlord has applied for a monetary order for the cost of repairs and to retain the security deposit. As the tenancy has not yet ended and these sections of the landlord's application are unrelated to the main section which is for an order of possession and a monetary order for unpaid rent and utilities, I dismiss these sections of the landlord's claim with leave to reapply.

Issues to be decided

Is the landlord entitled to an order of possession or should the notice to end tenancy be set aside? Does the tenant owe for rent and utilities? Is the tenant entitled to compensation?

Background and Evidence

The landlord and tenant entered into a tenancy agreement on September 23, 2011. The rent is \$1,500.00 per month due on the first day of each month. The rental unit is a two level home. The tenant occupies the upper level three bedroom suite. The lower level has two suites for a total of two occupants. The tenant stated that she lived alone but during the hearing contradicted her own testimony and stated that had a relative staying temporarily with her.

The landlord filed the original agreement into evidence and the tenant filed a copy of the agreement. Certain portions of these submissions do not match each other. According to the landlord's submission, the tenant was responsible for half the cost of utilities while according to the tenant's submission, she was not responsible for cost of utilities.

The tenant stated that a draft of the agreement was made on September 23, 2011, according to which she was supposed to pay half the utility bills. The tenant added that this draft was amended on September 29, 2011 and she was relieved of her responsibility to pay for half the utilities.

The tenant moved in on September 23, 2011. The landlord testified that the agreement was written out by his daughter on September 29, 2013 and that she signed on his behalf. The original agreement was misplaced and the landlord was not sure of the terms of the agreement. The landlord asked the tenant about the payment of utilities and she told him that he was responsible for utilities.

The landlord located the agreement in early 2013 and notified the tenant that she was liable for the payment of half the utility bills. The tenant refused to pay. In March 2013, the landlord received a notice of disconnection and forwarded it to the tenant. On April 16, the service was disconnected. On May 01, 2013, the tenant paid \$1,534.00 to have the service reconnected. The tenant considered this amount as rent for May and asked the landlord to reimburse her the balance of \$34.00.

The landlord stated that since then the tenant has not paid further utilities and he has received additional bills.

The tenant did not pay rent on May 01, 2013. On May 18, 2013, the landlord served the tenant with a ten day notice to end tenancy for non payment of rent. The tenant agreed that had not paid rent for May but stated that she had instead paid the outstanding utilities, which was the responsibility of the landlord.

The landlord is requesting an order of possession effective two days after service on the tenant and for a monetary order for rent for May and outstanding utilities.

The tenant has applied for compensation in the amount of \$4,500.00. The tenant stated that \$3,000.00 is towards a rent reduction for the entire term of the tenancy, as the landlord had not carried out repairs that he had promised to. The tenant stated that \$1,500.00 was for emergency repairs that she had not done yet but planned to do so.

The parties had discussed permission for the tenant to sublet and the landlord agreed to allow the tenant to do so, on condition that he approved of the prospective tenant.

Analysis

I have reviewed the tenancy agreements filed into evidence by both parties. The tenant stated that the original agreement was written on September 23, 2011 and amended on September 29, 2011. Based on this statement, I find that the document filed into evidence by the landlord is dated September 29, 2011 and therefore is the true agreement.

In this agreement document the landlord's entries are in black ink while the tenant's entries are in blue ink which further confirms that on a balance of probabilities this document filed by the landlord is the original tenancy agreement.

In addition, upon taking a closer look at the changes on the tenant's photocopy of the tenancy agreement, I find that the initials of the landlord beside the changes, do not match up with the initials elsewhere on the same document. Therefore I find that the landlord has filed the original agreement and according to this agreement, the tenant is responsible for half the cost of utilities.

The tenant occupied the unit for over a year before the landlord asked her to pay for utilities. Even though I accept the landlord's testimony that he had misplaced the original agreement and was not sure about who pays utilities, I find that it was his responsibility to enforce the terms of the tenancy in a timely manner. The landlord notified the tenant in February 2013, and therefore I will award the landlord the cost of utilities from this month on.

The tenant has paid the outstanding bill on May 01, 2013 in the amount of \$1,534.00 and therefore I find that the landlord is not entitled to any further monies towards utilities, as his entitlement starts in February 2013. If the tenant does not cover her share of the bills received after May 01, 2013, the landlord is at liberty to make application for a monetary order.

I further find that the tenant received the notice to end tenancy for unpaid rent, on May 18, 2013 and did not pay rent within five days of receiving the notice to end tenancy, pursuant to Section 46 to set aside the notice to end a residential tenancy, and the time to do so has expired.

In these situations, the *Residential Tenancy Act* provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the Notice. Pursuant to section 55(2) I am issuing a formal order of possession effective two days after service on the tenant. The Order may be filed in the Supreme Court for enforcement.

Based on the sworn testimony of both parties, I accept the landlord's evidence in respect of the claim. As agreed to by the tenant, I find that the tenant did not pay rent for May 2013. Therefore the tenant owes the landlord **\$1,500.00** in unpaid rent.

Since the landlord has proven his case, he is also entitled to the recovery of the filing fee of **\$50.00**. Accordingly, I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the amount of **\$1,550.00**. This order may be filed in the Small Claims Court and enforced as an order of that Court.

In March 2013, the tenant had applied for compensation for repairs that the landlord allegedly agreed to carry out and did not. This matter was heard on April 03, 2013. The arbitrator dismissed the tenant's claim for compensation. In this application, the tenant has applied for the same remedy and therefore I dismiss the tenant's claim for \$3,000.00.

The tenant is also claiming \$1,500.00 for the cost of hiring a contractor to do the required repairs. The tenant stated that she has not yet incurred this expense and therefore her claim is dismissed.

Regarding the tenant's application for permission to sublet, this is not an issue as the landlord has given her conditional permission to do so. Since the notice to end tenancy is upheld and the tenancy is ending, the tenant's claim for a rent reduction is moot.

Conclusion

I grant the landlord an order of possession effective two days after service on the tenant. I also grant the landlord a monetary order in the amount of **\$1,550.00**.

The tenant's application is dismissed in its entirety.

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: June 11, 2013

Residential Tenancy Branch

