



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Homelife Peninsula Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, OPB, MNR, MNSD, FF, CNR, MNDC, ERP, RP, RR

Introduction

There are applications filed by both parties. The Landlord seeks an order of possession and a monetary order for unpaid rent, to keep all or part of the security deposit and recovery of the filing fee. The Tenants have made an application to cancel the notice to end tenancy issued for unpaid rent, a monetary order for money owed or compensation for damage or loss, an order for the Landlord to make emergency repairs for health or safety concerns and make repairs to the unit, site or property, to reduce rent for repairs, services or facilities agreed upon but not provided and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. The Tenant has confirmed that no documentary evidence has been submitted and that she has received the Landlord's notice of hearing package and the submitted documentary evidence. The Landlord has confirmed receiving the Tenant's notice of hearing package.

Issue(s) to be Decided

- Is the Landlord entitled to an order of possession?
- Is the Landlord entitled to a monetary order?
- Is the Landlord entitled to retain the security deposit?
- Is the Tenant entitled to an order cancelling the notice to end tenancy?
- Is the Tenant entitled to a monetary order?
- Is the Tenant entitled to an order for emergency repairs?
- Is the Tenant entitled to an order for repairs to the unit, site or property?
- Is the Tenant entitled to an order to reduce rent?

Background and Evidence

This Tenancy began on July 1, 2013 on a fixed term tenancy ending on June 30, 2014 as shown by the submitted copy of the signed tenancy agreement. The monthly rent is \$2,075.00 payable on 1st of each month and a security deposit of \$1,037.50 was paid.

Both parties agreed that the Landlord served the Tenant with a 10 day notice to end tenancy for unpaid rent dated August 13, 2013 by posting it to the rental unit door. The notice states that the Tenant failed to pay rent of \$2,075.00 due on August 1, 2013. The notice states an effective date of August 23, 2013. Both parties have acknowledged in their direct testimony that the Tenant did not pay any rent due to the Tenant's issues over the condition of the rental unit. The Tenant has confirmed that no order from the Residential Tenancy Branch granting leave to withhold rent or that there was any consent from the Landlord to withhold rent. The Landlord states that the Tenant is still occupying the rental unit as of the date of this hearing and has not paid any rent for September 2013 of \$2,075.00. The Tenant has confirmed that no rent for September has been paid in her direct testimony. The Landlord seeks a monetary order of \$4,150.00 for unpaid rent for August and September (of \$2,075.00 per month).

The Tenant seeks an order cancelling the notice to end tenancy issued for unpaid rent, a monetary order of \$5,000.00 which consists of \$1,037.50 for the return of the security deposit, \$2,375.00 for the loss of her spouse, T.F.'s wages and \$2,075.00 for the return of the July 2013 rent paid. The Tenant states that the rental unit was not provided in a condition as promised in the signed tenancy agreement. The Landlord disputed the Tenant's claims. The Tenant states that the downstairs unit is completely unfit for living, there are electrical issues with the stove, there are sparks coming out of an electrical outlet in the downstairs kitchen, there is a short in the main fan in the upstairs living room, the rental only has 1 fire/smoke detector, the upstairs kitchen faucet is broken shooting water while running and leaks water when not running, there is a light in the garage which is shorted, the main drying machine does not work, the faucet in the downstairs kitchen is leaking terribly, a broken window in the living room. The Landlord has submitted a copy of the condition inspection report for the move-in dated June 30, 2013 to dispute the Tenant's claims.

Analysis

I accept the undisputed testimony of both parties and find that the Landlord has established that the Tenant has failed to rent when due as per the 10 day notice to end tenancy dated August 13, 2013 that was posted to the rental unit door. The Landlord is entitled to an order of possession. The order of possession must be served upon the Tenant. Should the Tenant fail to comply, the order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

As for the Landlord's monetary claim, I find that the Landlord has established a total monetary claim of \$4,150.00 for unpaid rent. The Landlord is also entitled to recovery of the \$50.00 filing fee. I order that the Landlord retain the \$1,037.50 security deposit in partial satisfaction and I grant a monetary order for \$3,162.50 for the balance due.

I find that as the Tenancy is at an end, I decline to make any order for emergency repairs for health or safety concerns, to make repairs to the rental unit and reduce rent for repairs, services or facilities. These portions of the Tenant's claim are dismissed.

As for the Tenant's monetary claim, I find that the Tenant has failed. The onus or burden of proof lies with the party who is making the claim. 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. I prefer the evidence of the Landlord over that of the Tenant. The Tenant's claim is in conflict with the completed condition inspection report for the move-in from June 30, 2013. The Tenant has not provided sufficient details of the \$5,000.00 claim sought. For example any documentation that would support the monetary claim of lost wages by T.F. The Tenant has also failed to provide sufficient evidence to satisfy me that the lost wages were as a result of any negligence on the part of the Landlord. The monetary claim is dismissed.

Conclusion

The Landlord is granted an order of possession and a monetary order for \$3,162.50. The Tenant's Application is dismissed.

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 05, 2013

Residential Tenancy Branch

