



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR OLC RP LAT RR O FF

Preliminary Issues

At the outset of this proceeding the Tenant testified that she was no longer disputing the eviction notice and would be moving out of the unit tomorrow, January 4, 2014. She indicated that she no longer feels safe in the unit due to the Landlord's attempts at illegal entry into the unit and because of past racial slurs spoken to her by the Landlord.

Based on the above, the Tenant confirmed she was withdrawing her requests to cancel a notice to end tenancy for unpaid rent; to obtain Orders to have the Landlord comply with the Act and make repairs to the unit, site or property; to authorize the Tenant to change the locks to the rental unit; and for reduced rent for services or facilities agreed upon but not provided. She stated she wished to proceed with her request for other reasons which were to receive compensation for the recovery of hydro bills she paid.

Introduction

This hearing dealt with an Application for Dispute Resolution filed on November 12, 2013, by the Tenant as amended above.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Is the Tenant entitled to compensation for reimbursement of hydro costs?

Background and Evidence

The parties entered into a written month to month tenancy agreement that began on July 1, 2013. Rent is payable on the first of each month in the amount of \$670.00 and the Tenant paid \$335.00 as the security deposit.

The Tenant testified that she no longer feels safe in this rental unit so she will be moving out effective tomorrow, January 4, 2014. She confirmed receipt of the Eviction Notice on November 28, 2013, which was left for her at her place of employment.

The Tenant testified that she typed up her tenancy agreement as requested by the Landlord. She included in the agreement that utilities were included in her rent, at section six, and the Landlord signed the agreement. She was told by the Landlord that hydro bills must be in her name if she wants hydro so on or before the start of her tenancy she set up a hydro account and has been paying the bills. She has paid \$135.00 in hydro bills which she is claiming to recover from the Landlord because her tenancy agreement says that utilities (heat and hot water) are included. She indicated she had not paid rent for January 2014 and was not sure if she would pay a daily rate.

The Landlord testified that he is a senior and does not have access to a computer so he asked the Tenant to type up her own tenancy agreement the same as the sample he gave her. He read the agreement when she gave it to him but he missed that she had changed the terms about hydro before he signed it. He stated that he explained to her from the beginning that she controls her own hydro so she needs to pay for her own bill. He indicated that there was only one bill and that would be for hydro which she has been paying from the beginning.

In closing, the parties mutually agreed to meet at the rental unit at 1:00 p.m. on January 4, 2014, to conduct the move out inspection.

Analysis

I have carefully considered the forgoing, the documentary evidence before me, and on a balance of probabilities I find as follows:

Section 44(1)(a) of the Act stipulates that a tenancy ends if the landlord gives notice to end the tenancy in accordance with section 47 of the Act [landlord's notice to end tenancy for cause].

The Tenant has withdrawn her request to cancel the Notice to End Tenancy and will be vacating the unit as of January 4, 2014. The Tenant confirmed receipt of the 1 Month Notice on November 28, 2013; therefore, the effective date of the Notice is **December 31, 2013**.

Based on the above, I find this tenancy ended effective December 31, 2013, in accordance with the 1 Month Notice, pursuant to section 44(1)(a) of the Act.

The Tenant is still residing in the unit; therefore, I find the Tenant is overholding the rental unit and is required to pay the Landlord a daily rate of \$21.62 (\$670.00 – 31 days) for use and occupation, until such time as possession of the unit is returned to the Landlord.

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement;
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation;
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Only when the applicant has met the burden of proof for all four criteria will an award be granted for damage or loss.

The undisputed evidence was that the Landlord requested the Tenant to type up her own tenancy agreement as per the sample agreement the Landlord gave the Tenant. The Tenant typed up a new agreement and changed item # 6 of that agreement so it read "*Heat and hot water are included in monthly rental*". The Landlord testified that he missed that change in the agreement and that he was not aware she had changed it before he signed the tenancy agreement.

In common law there is a doctrine of *contra proferentem* which means giving the benefit of any doubt in favor of the party upon whom the contract was foisted. In plain language this means that the benefit of doubt goes to the person who did not construct the contract.

Upon review of the tenancy agreement I note that there are no initials placed on page 2 or by section 6 to indicate that the Landlord's attention was drawn to the change regarding heat and hot water. Furthermore, the Tenant's actions clearly indicate that she had knowledge that she was required to pay for hydro because she established an account in her name and has been paying the bills since the onset of her tenancy.

Based on the above, I accept the Landlord's submission that the change to the terms of the tenancy agreement was made without his knowledge or approval and was contrary to what he requested to be included in the tenancy agreement. Accordingly, I find the Tenant provided insufficient evidence to prove her entitlement to compensation for the cost of hydro, and the claim is dismissed, without leave to reapply.

The Tenant has been successful with her application and withdrew the remainder of it; therefore I decline to award recovery of the filing fee.

Conclusion

The Tenant has withdrawn her requests to cancel a notice to end tenancy for unpaid rent; to obtain Orders to have the Landlord comply with the Act and make repairs to the unit, site or property; to authorize the Tenant to change the locks to the rental unit; and for reduced rent for services or facilities agreed upon but not provided.

I HEREBY DISMISS the Tenant's claim for monetary compensation, without leave to reapply.

Any deposits currently held in trust by the Landlord are to be administered in accordance with Section 38 of the *Residential Tenancy Act*.

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: January 06, 2014

Residential Tenancy Branch

