



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession based on unpaid rent, a monetary order for unpaid rent, and to recover the filing fee for the Application.

Both parties appeared at the hearing. The Landlord also had the assistance of his friend G.C. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?

Background and Evidence

The relevant evidence with respect to the tenancy is as follows:

1. The parties entered into a written Residential Tenancy Agreement signed by both parties on January 1, 2010.

2. The parties agreed that the address noted on the Landlord's Application for Dispute Resolution is the correct address of the rental unit, not that which is noted on the Tenancy Agreement.
3. The tenancy began on January 1, 2010.
4. The monthly rent was \$550.00 payable on the 1st of the month and included: water, electricity, heat, stove and oven, refridgerator [sic], window coverings and storage.
5. The Tenant's boyfriend, D.C., moved into the rental unit without the consent of the Landlord. The parties could not agree as to the date he moved in but both parties agreed that the Landlord did not provide written consent to the additional tenant.

Based on the evidence filed and the testimony of the Tenant, I find that the Tenant was served with a 10 day Notice to End Tenancy for non-payment of rent on July 15, 2014 by posting to the door (the "Notice").

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service. The Notice also explains the Tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

The Tenant testified that she refused to pay the outstanding rent as she did not feel that the \$700.00 claimed by the Landlord was accurate. She stated that the correct amount of rent was \$600.00 pursuant to the Notice of Rent Increase dated September 30, 2012.

Initially the landlord testified that they had a verbal agreement that she would pay rent in the amount of \$700.00 commencing July 1, 2014. The Tenant disputes this allegation.

The Tenant confirmed that she did not pay the \$600.00 for July, nor did she pay the \$600.00 for August rent and instead used the funds for car repair.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenant has not paid the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

Under section 26 of the Act, the Tenant must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the Act, unless the Tenant has some authority under the Act to not pay rent. In this situation the Tenant had no authority under the Act to not pay rent.

I find that the Landlord is entitled to an order of possession effective 7:00 p.m. on August 29, 2014, the date agreed to by the parties. This Order may be filed in the Supreme Court and enforced as an order of that Court. The parties also agreed that they would perform the section 35 end of tenancy condition inspection at that time.

I find that the Landlord has established a total monetary claim of \$1,250.00 comprised of \$600.00 for July rent, \$600.00 for August rent and the \$50.00 fee paid by the Landlord for this application.

I dismiss the Landlord's request for a monetary claim for \$1,400.00 for rent owing for July and August 2014 as the rental increase to \$700.00 per month does not comply with section 42 of the Act in terms of notice, amount, or form.

I also dismiss the Landlord's request for a monetary Order for unpaid utilities as the Landlord failed to submit any supporting receipts for this amount, nor has he submitted proof of his demand for payment by the tenant as required by the Act.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Tenant failed to pay rent and did not file to dispute the Notice to End Tenancy. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The Landlord is granted an order of possession and is granted a monetary order for the balance due.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: August 25, 2014

Residential Tenancy Branch

