



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes mt, cnr, dri, lat, mndc, mnr, opr, ff

Introduction

The tenant applies for a variety of orders, but at the hearing confirmed that he will be vacating the premises, and the only issue now claimed is a monetary award.

The landlord requests an Order of Possession and a Monetary Order.

Issues to Be Decided

- Is the landlord entitled to an Order of Possession?
- Is there money owed by either party to the other?

Background and Evidence

The tenant testified as follows:

This tenancy began on October 6, 2013. Pro-rated rent was paid for that month on the basis that the full rent would be \$1,100.00 per month. A security deposit of \$525.00 was paid on October 1, 2013. After the tenancy had started, the landlord then requested that the tenant pay a further \$100.00 for electricity, or move out. The tenant reluctantly agreed, and for 5 months paid \$1,150.00 for rent and utilities to the landlord. The tenant then approached the landlord, and requested that the utilities no longer be paid, as the consumption would be going down for the summer months. The landlord agreed this would be fair, and the tenant then paid rent of \$1,050.00 and no extra for utilities. In July, however, the landlord demanded that the \$100.00 be paid again. The tenant refused to pay the utilities any longer, and thereafter paid only \$1,050.00 per month. He plans to vacate the premises November 4, 2014.

The landlord testified as follows:

The tenant was told even before he moved in that in addition to rent, the tenant had to pay another \$100.00 for electricity. In February, the tenant requested a reduction because his family was moving out, and the landlord took pity on him and said if they were out, he did not have to pay the extra sum for utilities. The family moved back in in April, and the landlord requested that the utilities again be paid, but the tenant refused. The tenant stopped paying rent completely after August, and owes for September and October. A 10 day notice to end the tenancy was issued by the landlord. If he is not moving out until November 4, he also should pay for the entire month of November.

Both parties agreed that the tenant owes the landlord \$99.00 for a digital box, and movie rental.

Analysis

A critical issue in this case is what was agreed to between the parties in terms of payment for electricity. If the tenancy agreement never required any payment for electricity, then the tenant should be reimbursed for the utility payments he made, (which would effectively be an illegal rent increase). Alternatively, if the parties agreed that the tenant would contribute towards the electricity bills, then the tenant owes the landlord for the months in which the sum was payable, but not paid. A difficulty in this case is that no written agreement was entered into between the parties, even though that is a requirement as between landlords and tenants. The preparation of such agreement is the landlord's responsibility, and details such as whether utility costs are included in rent should be included in such agreement, in advance of the start of the tenancy. In this case, given that the first months rent was pro-rated on the basis of rent of \$1,050.00, and given that the security deposit was half of \$1,050.00 I find that there was no agreement for payment of utilities made in advance of the start of the tenancy. Under those conditions, the tenant's payment of the electrical utility for a period is deemed an illegal rent increase. I accept that the extra \$100.00 was paid by the tenant for 5 months. The tenant must be reimbursed or credited the sum of \$500.00.

The tenant has paid no rent for September and October, but has occupied the premises during this time. He must pay the sum of \$2,100.00 to the landlord.

The tenant will continue to occupy the premises until November 4, 2014, and agrees that the landlord receive an Order of Possession effective that date. Such order is made.

The landlord submits that if the tenant vacated before the end of October no loss of rent would be suffered, but if he leaves November 4, she will lose rent for an entire month of November. I note that had the tenant not failed to pay rent, the tenant would be required to give a full months notice to the landlord to vacate, and would be liable to pay the rent during that notice period. On the other hand, the landlord has an obligation to minimize her loss, and it may well be that she can attract a new tenant effective November 15, should she advertise immediately. Accordingly, while the tenant is liable for whatever loss of rent the landlord suffers, I accept that the only loss proven at this time is \$525.00, or half of the rent for November. Should the landlord attempt, but fail to place new tenants for November 15, the landlord remains at liberty to make a further claim for lost rent as against the tenant. Accordingly, I find the tenant liable for a further \$525.00, for rent to November 4 and loss of rental income to November 15.

The sum of \$99.00 is payable by the tenant to the landlord, for the movie box and movie rentals, as agreed.

The tenant requests recovery of the security deposit. That request is premature, given that the tenant has not yet vacated the premises.

Both parties request recovery of their filing fee, and as both are partially successful I typically would make such order. Upon review however, I find that in fact no filing fee was ever paid by the tenant, and therefore no recovery is needed. I therefore order only that the landlord recovery her filing fee from the tenant.

Conclusion

Pursuant to Section 55(2)(b) of the Residential Tenancy Act, I issue an Order of Possession effective 48 hours following service upon the tenant. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court for enforcement.

The tenant is awarded the sum of \$500.00, while the landlord is awarded a total of \$2,774.00 (\$2,100.00 + \$525.00 + \$99.00 + \$50.00). Offsetting one award from the other leaves a balance owing by the tenant to the landlord of \$2,274.00. The landlord is issued a monetary order in this amount.

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 29, 2014

Residential Tenancy Branch

