



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *OPR, CNR, MNR, MNDC, OLC, 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 a monetary order for unpaid rent and the filing fee.

The tenant applied to cancel the notice to end tenancy, for an order directing the landlord to comply with the *Act*, and for the recovery of the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence, make submissions and give affirmed testimony.

The tenant moved out on September 28, 2014. Since the tenant has moved out, the landlord no longer requires an order of possession and in addition, the portion of the tenant's application to cancel the notice to end tenancy and for an order directing the landlord to comply with the *Act* is moot. Therefore, this hearing only dealt with the monetary claims of both parties.

Issues to be decided

Is the landlord entitled to a monetary order to recover unpaid rent and the filing fee? Is the tenant entitled to the recovery of the filing fee?

Background and Evidence

The tenancy started on July 28, 2014. There is no written tenancy agreement. The rental unit consisted of an apartment located over a commercial space. The tenant stated that the rent for both the residence and the commercial space was \$2,000.00 and the landlord agreed that she could live rent free for the first two months.

The landlord denied having agreed to allow the tenant to stay rent free and stated that rent for the residential unit was \$1,400.00. Both parties agreed that a security deposit was not paid by the tenant.

The landlord stated that the tenant moved in on July 28, 2014 without paying rent or security deposit. The landlord stated that when he requested rent, the tenant informed him that she had no money. On August 01, 2014, the landlord served the tenant with a notice to end tenancy. The tenant disputed the notice on August 11, 2014 and continued to reside in the rental unit without paying rent.

The landlord is requesting a monetary order for rent for the months of August and September 2014. The tenant disputed the amount of the rent and stated that 1,400.00 was excessive

Analysis

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove 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 the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

In this case the tenant stated that the landlord had agreed to allow her to live rent free for two months. The landlord denied this. In the absence of a written agreement confirming the arrangement that the tenant would live rent free for the first two months, I find on a balance of probabilities that the tenant was required to pay rent.

The amount of the rent was also in dispute. However based on the notice to end tenancy which was served on August 01, 2014, I find again on a balance of probabilities that it is more likely than not that the rent for the residential unit was \$1,400.00.

The tenant agreed that she did not pay rent for the two months she occupied the rental unit and therefore I find that the landlord has established a claim of \$2,800.00 for unpaid rent. Since the landlord has proven his case, he is entitled to the recovery of the filing fee of \$50.00.

The tenant applied to dispute the notice and then moved out. Since the tenant need not have applied to dispute the notice if she intended to move out, I find that she must bear the cost of filing her own application.

Overall the landlord has established a claim of \$2,850.00. I grant the landlord an order under section 67 of the *Residential Tenancy Act* for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord a monetary order in the amount of **\$2,850.00**.

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: October 08, 2014

Residential Tenancy Branch

