



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, CNR, O, MNSD, MNR, OPR, OPB, FF

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant, and one brought by the landlord. Both files were to be heard together, however the tenant was unable to provide any evidence of having served the landlord with her notice of hearing or hearing documents and therefore the tenant's application was dismissed with leave to reapply, and I dealt solely with the landlord's application at today's hearing.

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing.

I have given the parties the opportunity to present all relevant evidence, and to give oral testimony, and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

Has the landlord establish the right to an Order of Possession?

Has the landlord establish the monetary claim against the tenant, and if so in what amount.

Background and Evidence

The landlord testified that:

- They signed the tenancy agreement on October 1, 2014 with the monthly rent of \$800.00 and the security deposit of \$400.00 was collected on October 4, 2014.
- On October 11, 2014 they signed a mutual agreement to end the tenancy on October 15, 2014, and at that time the full October rent of \$800.00 was returned to the tenants on the agreement that they vacated the unit by October 15, 2014.
- The tenants failed to comply with that mutual agreement, failed to return the October rent, and have failed to pay any further rent.
- Therefore, as of today's date, there is rent outstanding for the months of October 2014, November 2014, and December 2014, for a total of \$2400.00.
- The Notice to End Tenancy was served on the tenants on October 16, 2014 after they failed to vacate the rental unit as promised.
- She is requesting an Order of Possession for as soon as possible and a monetary order for the outstanding rent of \$2400.00.
- The tenants were also supposed to pay utilities in the rental property and failed to pay any utilities, and although she does not have the exact amount she has estimated that they owe approximately \$200.00 at this time.

The tenant testified that:

- They did not sign a mutual agreement to end the tenancy, nor did the landlord ever return any of the October 2014 rent.
- The document that the landlord claims was signed by them as a mutual agreement to vacate, is a forgery.
- The reason no rent has been paid for the months of November 2014, and December 2014, is because all the problems the landlord has caused, has resulted in extra expenses and as a result they have been unable to pay any further rent.

In response to the tenant's testimony the landlord testified that:

- The mutual agreement to end the tenancy is not a forgery and certainly was signed by both tenants as well as herself on October 11, 2014 and the tenants were given \$800.00 cash with the agreement that they would vacate on October 15, 2014.

Analysis

It's my decision that I do not accept the tenants claim that the mutual agreement to end tenancy is a forgery.

I find it more likely that the tenants did sign the mutual agreement, and receive \$800.00 back from the landlords, and then failed to comply with the agreement to vacate.

The tenant admits that she has not paid any rent for the months of November 2014, and December 2014, claiming the landlord's actions have caused her extra expenses, however the Residential Tenancy Act does not allow the tenant to withhold rent without first getting an order from an arbitrator allowing them to do so.

Therefore it is my finding that the tenants, by failing to vacate the rental unit as agreed on October 15, 2014, are liable for the full rent for the month of October 2014, and since rent has not been paid for the months of November 2014 and December 2014, it's my finding that the tenants owe a total of \$2400.00 in outstanding rent.

Further I find that the tenants have been properly served with a 10 day Notice to End Tenancy and have failed to pay the outstanding rent within the 5-day grace period, and therefore I also allow the request for an Order of Possession.

It's my finding however that the landlords claim for utilities is premature as the landlord, at this time, does not know how much utilities are outstanding, and therefore that portion of the claim will be dismissed with leave to reapply.

I will allow the landlords request for recovery of the \$50.00 filing fee

Conclusion

I have issued an Order of Possession that is enforceable two days after service on the tenants.

I have allowed \$2450.00 of the landlords claim, and I therefore order that the landlord may retain the full security deposit of \$400.00, and I have issued a Monetary Order in the amount of \$2050.00.

As stated above the landlords claim for utilities is dismissed with leave to reapply.

As stated above the monetary portion of the tenant's application for dispute resolution has been dismissed with leave to reapply.

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: December 16, 2014

Residential Tenancy Branch

