



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNRL, OPU

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on May 25, 2018 (the “Application”). The Landlord sought an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The Landlord also sought a Monetary Order for unpaid rent and utilities as well as reimbursement for the filing fee.

This matter originally came before me for a hearing July 10, 2018. An Interim Decision was issued July 27, 2018. This decision should be read in conjunction with the Interim Decision.

The Landlord appeared at the hearing. The Landlord’s brother appeared at the hearing to assist the Landlord. The Tenant appeared at the hearing with the Witness who was outside of the room until required. I explained the hearing process to the parties who did not have questions when asked. The parties and Witness provided affirmed testimony.

Both parties had submitted evidence after the hearing on July 10, 2018. I addressed service of this evidence. The Landlord said he did not receive the further evidence of the Tenant. The Tenant confirmed she did not serve her evidence on the Landlord. I excluded the Tenant’s evidence given she failed to comply with rule 3.15 of the Rules of Procedure (the “Rules”) and my direction in the Interim Decision that all evidence submitted be served on the other party in accordance with the *Residential Tenancy Act* (the “Act”) and Rules.

The Tenant testified that she received the Landlord’s evidence but did not receive the receipt or electricity bill submitted. The Landlord testified that he served all evidence submitted on the Tenant.

Rule 3.5 of the Rules states:

At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with...all evidence as required by the Act and these Rules of Procedure.

Here, the Tenant testified that the receipt was not included in the evidence package. The Landlord testified that it was. The Landlord could not point to any evidence to support his position. It is the Landlord that has the onus to prove he served his evidence in accordance with the Rules. I cannot be satisfied that the Landlord served a copy of the receipt on the Tenant given the contradictory evidence on this point and lack of evidence to support the Landlord's position. I exclude the receipt.

The parties were given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence and oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to recover unpaid rent?
2. Is the Landlord entitled to recover unpaid utilities?
3. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord's evidence was provided through his brother throughout the hearings.

The Landlord had submitted a written tenancy agreement; however, it is not signed by the Tenant. The Landlord testified that the Tenant said she would sign the tenancy agreement but never did. The Landlord testified that the Tenant did not want to sign the written tenancy agreement. The Tenant testified that the Landlord was the one who insisted there be no paperwork.

The parties agreed there was a verbal tenancy agreement between them in relation to the rental unit. The Landlord testified that the tenancy started September 1, 2017 and ended April 1, 2018. The Tenant testified that she rented the unit in the middle of

September and that she was not required to pay rent until October. The Tenant said there was no end date to the tenancy. Both parties agreed rent was \$1,200.00 per month due on the first day of each month. The Landlord testified that the Tenant did not pay a security deposit. The Tenant testified that she paid a \$1,200.00 security deposit in October. Both parties agreed the Tenant vacated the rental unit May 29, 2018.

The Landlord testified that the Tenant paid the first two months of rent at the start of the tenancy and no security deposit. He testified that the Tenant did not pay any rent from November of 2017 to May of 2018, when the Tenant vacated the rental unit. He testified that the Tenant owes \$8,400.00 in outstanding rent.

The Tenant testified that she paid \$2,400.00 at the beginning of October for October rent and the security deposit. She testified that she paid \$2,400.00 in November for November and December rent and \$2,400.00 in January for January and February rent. The Tenant testified that in February, she asked the Landlord to reduce rent and that the Landlord agreed to reduce rent to \$1,000.00 per month for four months. The Tenant testified that she paid the Landlord \$2,000.00 in March for March and April rent. The Tenant testified that she told the Landlord she was moving in April and told him to use the security deposit as May rent.

The Landlord testified that he never agreed to reduce the rent to \$1,000.00.

The Tenant testified that she did not request rent receipts because she trusted the Landlord and that they became friends. The Landlord testified that the Tenant had a right to ask for rent receipts if she paid rent and that they did not even know each other.

The Tenant testified that the Landlord never provided a receipt for her first payment in October. The Landlord testified that he did provide a receipt.

The Tenant called the Witness. She testified that she was present when the Tenant and Landlord discussed that rent would be \$1,200.00 per month. She said the Tenant and Landlord agreed there would be no paperwork and that their handshake was sufficient. The Witness initially said this occurred October 2, 2017. The Witness then said this occurred before October 2, 2017. When questioned about this, the Witness said she was unsure of the dates. The Witness testified that she went to the bank with the Tenant and watched her withdraw the rent money. She testified that she watched the Tenant hand this money to the Landlord. The Witness testified that she saw the Tenant pay the Landlord \$1,200.00 for the security deposit and \$1,200.00 for rent.

The Witness testified that the Landlord did not provide a receipt for the first rent payment, did not do a walk through and did not do a written tenancy agreement. In response to a leading question by the Tenant, the Witness testified that she was aware the Tenant paid the security deposit at the same time as the first rent payment. In response to a leading question from the Tenant, the Witness agreed she was aware the Tenant asked the Landlord to reduce the rent.

The Tenant acknowledged that she owes utilities for the last period of her tenancy and agreed to pay the Landlord the \$150.00 requested in the Application.

Analysis

Pursuant to rule 6.6 of the Rules, the Landlord as Applicant has the onus to prove the claim.

The parties provided conflicting testimony on when the tenancy started, whether the rent amount was reduced and whether the Tenant paid rent for seven months of the tenancy. There is no admissible evidence before me that supports the Landlord's position on these issues.

The Tenant testified that the Landlord did not give receipts for the cash payments made. The Tenant called the Witness who testified that the Landlord did not provide a receipt for the initial payment made by the Tenant. The Landlord did not provide admissible evidence to support his position that he provided a rent receipt for the initial payment by the Tenant.

The Witness also provided evidence that the Landlord did not do a written tenancy agreement and agreed there would be no paperwork. This evidence supports the Tenant's testimony and contradicts the Landlord's testimony. The Witness also provided testimony that supports the Tenant's testimony regarding the start date of the tenancy and contradicts the Landlord's testimony in this regard.

I question why the Landlord would allow six months of non-payment of rent to pass without addressing this issue. The Landlord seemed to suggest the Tenant was manipulative and kept saying she would pay rent and that he accepted this. This does not accord with common sense when one considers the Landlord's testimony that he and the Tenant were not friends and did not even know each other.

I am not satisfied based on the evidence provided by the Landlord that he has proven the claim. I cannot accept the Landlord's position on when the tenancy started, whether the rent amount was reduced or whether the Tenant paid rent for seven months of the tenancy given the conflicting testimony and lack of evidence from the Landlord to support his position. I am not satisfied the Landlord is entitled to recover unpaid rent from the Tenant.

The Tenant agreed to pay the Landlord \$150.00 for utilities.

Given the Landlord was partially successful in this application, I award him reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Landlord is entitled to a Monetary Order in the amount of \$250.00.

Conclusion

The Landlord is entitled to a Monetary Order in the amount of \$250.00. This Order must be served on the Tenant and, if the Tenant does not comply with the Order, it may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: September 24, 2018

Residential Tenancy Branch