



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

The landlord applies for an order of possession and for a monetary award for rent and utilities. Since this application was brought the tenant has vacated the rental unit and the landlord has regained possession so an order of possession is no longer sought.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Does the tenant owe the landlord money for rent or for utilities?

Background and Evidence

The rental unit is a house less one upstairs bedroom reserved for Mr. M.Z. The lower part of the house contains its own suite, included in this tenancy.

There is a written tenancy agreement. It is not in the standard form provided by the Residential Tenancy Branch. It shows the landlord to be Mr. M.Z. however it is said that the landlord is really the applicant/owner Mr. X.W. and that Mr. M.Z. is merely his agent.

The tenant does not take a position on this question and I don't think it is significant to the central issues in this dispute.

The written tenancy agreement shows that the tenancy started in November 2018 for a one year term to November 9, 2019. The monthly rent was \$2200.00. The agreement does not stipulate a day of the month the rent is to be paid. The landlord received and still holds a \$1100.00 security deposit.

The tenant vacated the premises on August 21, 2019.

The tenancy agreement provided that "water fee is not charged, and other expenses are paid by [the tenant]."

At some point in time the lower suite was rented to a Mr. A.P. who still lives there. The tenant indicates Mr. A.P. paid rent directed to Mr. M.Z. Mr. M.Z. says he never collected any rent from Mr. A.P. Mr. A.P. somehow ended up with various utilities in his name. Neither party at this hearing could offer an explanation for how that happened.

Mr. M.Z. testifies that the tenant also rented out a bedroom to a Q.M. He provided a copy of the rental agreement for Q.M. It is in identical form to this tenant's rental agreement but shows this tenant to be Q.M.'s landlord. It appears to be signed by this tenant as Q.M.'s landlord.

Mr. M.Z. testifies that the tenant had failed to pay rent for six months until, in July, the landlord issued a ten day Notice to End Tenancy for unpaid rent of \$13200.00. He says the tenant has not paid any rent money since, including August rent.

Mr. M.Z. indicates the tenant was responsible to pay \$100.00 towards the internet account but didn't.

The tenant generally denies the landlord's claim, saying that Mr. A.P. and Q.M. paid rent directly to Mr. M.Z. The tenant also says he is a qualified carpenter and he performed carpentry work for Mr. M.Z. He produces an invoice dated April 13, 2019 for kitchen and bathroom renovation work totalling \$4633.13, including GST.

Analysis

The Tenant's Carpentry Work

Whether or not the tenant performed carpentry work for the landlord, there is no evidence of an agreement to permit him to deduct the value of that work from his rent. Additionally, in my view the work alleged to have been done was done by the tenant as a carpenter and not as a tenant. It is a claim that would have to be adjudged by a court and not the Residential Tenancy Branch's dispute resolution process.

Rent

The written tenancy agreement shows the tenant rented the entire premises but for Mr. M.Z.'s room. The tenant's bare allegation that there was some verbal agreement otherwise is not sufficient to overcome the effect of the written document. I find that the tenant was the tenant of the entire house and was the "landlord" of any other persons sharing the house, but for Mr. M.Z. Similarly, I do not accept his uncorroborated claim that the landlord was receiving or intercepting the rents paid by other occupants.

The burden of proving payment of a debt falls to the debtor. Similarly, the initial burden to prove payment of rent falls to the tenant. I find the tenant has not proved payment of any of the rent claimed by the landlord and that he owes rent accruing from January 2019 through and including August 2019, a total of \$15,400.00.

Utilities

The landlord's evidence regarding utilities does not permit of any sensible understanding. The power and gas bills were in this tenant's sub-tenant's name. How that came to be was not stated. Those bills appear to have been paid, at least in part, and not by the landlord. How the landlord comes to be responsible for the Hydro and gas costs was not explained.

Regarding the internet bill, there is no documentary evidence evincing any such bill, whether it was paid and if it was then by whom.

I note that evidence from Mr. A.P., who continues to live there as the landlord's tenant, would have been helpful in this matter.

In result, I dismiss the landlord's claim to recover utility costs.

Conclusion

The landlord is entitled to recover rent totalling \$15,400.00 plus the \$100.00 filing fee for this application.

I authorize the landlord to retain the \$1100.00 security deposit in reduction of the amount awarded. The landlord will have a monetary order against the tenant for the remainder of \$14,400.00.

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: September 10, 2019

Residential Tenancy Branch