



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, OLC, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), this hearing dealt with the Tenant's application to cancel a 10-Day Notice for Unpaid Rent and Utilities (Notice), a request that the Landlord comply with the Act or rental agreement in providing various services, and a request for recovery of the filing fee.

Preliminary Matters

At the start of the hearing, the Tenant advised that on May 12, 2023, she vacated the rental unit. Some personal property belonging to the Tenant remains at the rental unit, which the Landlord packed on May 19, 2023 and maintains at the property until such time as arrangements can be made for the Tenant to claim her belongings. At the time of the hearing, the parties were unsuccessful in reaching a settlement for the transport of the personal property to the Tenant's storage unit.

Issues to be Decided

1. Did the Tenant fail to pay rent when due?
2. Is the Landlord entitled to a Monetary Order for unpaid rent?
3. Is the Tenant entitled to recover the application filing fee from the Landlord?

Background and Evidence

The tenancy commenced on February 1, 2023, with a stated "minimum" fixed three-month term in the written rental agreement. The rent was \$950.00 per month payable on the first day of each month. The Tenant vacated the rental unit on May 12, 2023.

The Tenant testified that utilities were to be included and submitted text message screen shots between her and the Landlord to support that position. It is noted that the text states monthly rent is \$975.00 including utilities and internet. The rental agreement states the Tenant is to pay for all utilities for the rental unit except water and sewer. The rental agreement does not provide for a security deposit, and both parties agreed there was no security deposit requested or collected.

The Landlord testified that the text message between her and the Tenant was actually a "sample" of a tenancy arrangement she had with another individual. The Landlord stated that the Tenant was to pay 20 percent of the utilities, a ratio she determined based upon the square footage of the rental unit to those other rental units on her property. The Tenant did pay utilities for May 2023 as requested by the Landlord.

The Tenant testified that the rental of the unit was in connection with her employment by Landlord, who operated an equestrian farm where the rental unit was located. The Tenant stated that she was to work 3 to 4 days per week for 3 to 4 hours a day, tending to the horses. She stated that her hourly wage was \$20.00, for which there was no tax withholding, and which was then credited toward her rental obligation.

The Landlord denied that the Tenant was her employee, instead testifying that the Tenant would "volunteer" to tend to the horses. The rental agreement is silent on whether the rental unit is contingent on or provided for the purposes of employment on the farm. The Tenant explained that housing on the property was necessary to work on the farm given the remoteness of the location and lack of public transportation.

Although the Landlord claims that Tenant was a volunteer worker, the Tenant submitted a text from the Landlord to her which sets forth the number of hours worked by the Tenant in February as a credit against rent with a balance owing. The Tenant also submitted a text exchange with the Landlord dated February 28, 2023 in which the Landlord asks when the Tenant will be able to work as she is preparing the monthly schedule. Additionally, the Landlord provided the Tenant an employment termination letter dated April 16, 2023.

On February 24, 2023, the Tenant broke her leg while on the farm. The Tenant did not pay rent in February as she was waiting for disability payments. The Landlord texted the Tenant the hours she worked in February, with a calculation of the amount short on rent (rent stated as \$975.00 in the written document prepared by the Landlord and sent by text to the Tenant). In March, when the Tenant received a disability payment, she

made a partial rent payment of \$400.00 towards February rent, but paid no rent for March or April.

The Tenant testified that contrary to the Landlord's claim that rent was not paid, after she broke her leg, the Landlord agreed that she could work on the farm's social media site and earn wages toward the rent obligation. The Landlord denied this arrangement.

On April 24, 2023, the Landlord issued the Notice for unpaid rent in the amount of \$1,500.00 due as of April 1, 2023. This amount included the rent for February at \$950.00, balance of the rent for March of \$550.00 (the Landlord testified the Tenant had paid \$450.00 toward March rent) and rent for April 2023 in the amount of \$950.00. There was no request for unpaid utilities. The Notice was served on the Tenant by posting on the rental unit door.

The Tenant timely filed for dispute resolution and served the notice of dispute resolution and copies of her evidence on the Landlord in person on April 27, 2023. The Landlord denied receiving the dispute resolution packet but had knowledge of and was able to refer to the evidence during the hearing. The Landlord was able to identify and testify regarding documents submitted by the Tenant. I find the Landlord was sufficiently served under section 71(2)(c) of the Act.

Analysis

The relationship between the parties since February 2023 has necessitated the involvement of the local police and remains acrimonious. During the hearing, it was apparent that the terms of the tenancy are equally contentious between the parties.

The Landlord's statements as to the amount of the monthly rent and whether (and which) utilities were included was inconsistent in the evidence submitted and the testimony given. The Landlord provided an electric, gas and two internet statements in this proceeding simply marked as "20%" due from the Tenant. There was no testimony that these bills were given to the Tenant. Additionally, the amounts vary substantially from the sum the Landlord requested in utility payment from the Tenant in May.

I find the Tenant's testimony and evidence regarding the tenancy to be credible. The text messages between the parties provided by the Tenant clearly establish that the rental unit was provided by the Landlord in order for the Tenant to provide services on the farm. The Tenant's testimony regarding the remoteness of the farm in relation to

available transportation services bolsters her claim. Additionally, after the Tenant was injured, the Landlord sent a text message to the Tenant summarizing the hours of work she had completed that month and applying that to the monthly rent. The Tenant also provided text messages between the parties that referred to the Landlord's business social media account. I find it more likely than not that the Tenant's testimony that after her injury, rather than work with the horses, the Landlord instead had the Tenant work on the business social media.

I find the Landlord's version of events to be unreliable and self-serving. For instance, the Landlord stated that the text outlining the monthly cost of the rental unit would be off-set by work on the farm was a "sample" is simply not credible. The text message was specific as to hours of work, monthly rental rate and which utilities were included was sent directly to the Tenant prior to commencement of the tenancy. The text was part of a conversation between the parties, and there is no mention in previous or subsequent texts that the Landlord was providing a "sample." Furthermore, it is incredulous that the Tenant was a "volunteer" when the Tenant provided a text message where the Landlord states the hours worked and wages earned applied toward rent.

I find the Tenant's version of events provides an account which a practical and informed person would readily recognize as reasonable and reliable. Therefore, I give the Tenant's evidence the greater weight.

The Landlord bears the onus of proof as to the amount of unpaid rent or utilities for which she requests a monetary order. Based upon the evidence submitted and the balance of probabilities, I find the Landlord failed to establish she is owed rent. Therefore, I decline to issue a monetary award to the Landlord for unpaid rent.

Conclusion

I find the tenancy was terminated on May 12, 2023 when the Tenant was removed from the rental unit. The Tenant's application to cancel the Notice is denied without leave to reapply as the tenancy had ended prior to the hearing. I find there is a lack of credible evidence to establish the Tenant owes the Landlord for unpaid rent and unpaid utilities and make no monetary order to the Landlord for unpaid rent or unpaid utilities. In my discretion, I decline to award reimbursement of the filing fee to the Tenant.

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: July 4, 2023