



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute Codes: *MNDC, CNC, OLC, RPP*

Introduction

This hearing dealt with an application by the tenant, to cancel the notice to end tenancy for cause pursuant to section 47 and for a monetary order for compensation pursuant to section 67 of the *Residential Tenancy Act*. The tenant also applied for the return of her personal belongings that were left behind in the rental suite, and for the landlord to comply with the *Act*.

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

The tenant testified that she moved out on April 15, 2009 and retrieved all her belongings on April 21, 2009. Therefore, the tenant withdrew the portions of her application that dealt with cancelling the notice to end tenancy and for the return of her personal belongings.

Issues to be decided

Was the tenant shut out of the rental unit and therefore forced to move out prior to the effective date of the notice to end tenancy? Is the tenant entitled to a monetary order for compensation in the amount of \$1425.00, for moving costs, the return of her rent for April, and other costs associated with her move?

Background and Evidence

The tenant testified that on February 15, 2009, she moved into the rental unit, to share the premises, as a sub tenant of a co worker (SC). SC rented the lower level of the home and the owner of the property who is named as the respondent, occupied the upper level.

SC rented the lower level for \$900.00 per month and the tenant's share was \$450.00. On March 01, 2009, the tenant paid \$450.00 to SC towards her share of rent for March. The tenant also paid \$450.00 to SC on April 01, 2009.

The tenant stated that soon after she moved in, she met with the owner of the property and they entered into a written tenancy agreement, in the presence of SC. The tenant stated that she never received a copy of the agreement.

The owner testified that she did not enter into a tenancy agreement with the tenant. SC rented the lower level from the owner and paid \$900.00 for rent each month. The owner stated that she provided rent receipts to SC and was aware that SC was sharing rent with a sub tenant.

On April 13, 2009, the owner served the tenant with a one month notice to end tenancy for cause. The effective date of the notice was May 15, 2009. The tenant stated that she felt her safety was threatened by the actions of SC and therefore she moved out on April 15, 2009, leaving behind some of her possessions.

The tenant stated after she moved out on April 15, 2009, SC told her that the locks were changed. The tenant removed her belongings on April 21, 2009, by appointment. The tenant stated that the rent at her new residence was \$300.00 more per month, than at the dispute rental suite and she was also required to pay rent for half of April. The tenant stated that she is entitled to a refund of the rent for April already paid to SC and is claiming the following:

1.	Rent for April paid to SC	\$450.00
2.	Half month rent at the new residence	\$375.00
3.	Rent differential for May	\$300.00
4.	Moving costs	\$300.00
	Total	\$1425.00

The owner stated that she did not ask the tenant to leave earlier than the effective date of the notice and the tenant moved out of her own accord. The owner stated that the locks were never changed and also stated that the tenant moved out prematurely due to problems that resulted from a personal conflict between the tenant and SC. The owner stated that she did not collect rent from the tenant and therefore did not owe the tenant a refund of her rent or any other compensation that the tenant was claiming.

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 she had entered into a tenancy agreement with the owner of property. The owner denied this and the tenant did not file any evidence to support her claim. The tenant paid her rent to SC and therefore the tenant was in a landlord – tenant relationship with SC. Accordingly, based on the sworn testimony of both parties, I find that the tenant did not have a contractual relationship with the owner, who the tenant has named as the respondent. SC is the tenant's landlord and since the tenant paid her rent to SC, she should direct her claims for the return of rent and other compensation towards SC.

Conclusion

The tenant's application for compensation for loss under the *Act*, in the amount of \$1425.00 is dismissed with leave to reapply.

Dated May 27, 2009.

Dispute Resolution Officer