



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MND, MNSD, MNDC, FF

Introduction

Some documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally 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

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together.

Landlord's application

This application is a request for an Order of Possession based on a Notice to End Tenancy for non-payment of rent, a request for a monetary order for outstanding rent and utilities, a request to retain the security deposit for damages, and a request for recovery of the filing fee.

First of all it is my decision that I will not deal with all the issues that the landlord has put on the application. For claims to be combined on an application they must related.

Not all the claims on this application are sufficiently related to the main issue to be dealt with together.

I therefore will deal with the request for an order possession based on a Notice to End Tenancy that was given for outstanding rent and utilities, and I will deal with the request for a monetary order for those alleged outstanding rent and utilities, however I will not deal with the claim for damages and I therefore dismiss the claim for damages with liberty to re-apply.

Tenant's application

The tenant's application is a request to cancel a Notice to End Tenancy that was given for non-payment of rent and utilities.

Background and Evidence

The landlord testified that:

- The tenant failed to pay the \$3600.00 rent for the month of July 2011 and therefore on July 9, 2011 he served her with a 10 day Notice to End Tenancy for non-payment of rent.
- The tenant has not complied with that notice and has not paid the outstanding rent and in fact now the full August 2011 rent is also outstanding.
- The tenant also failed to pay her utilities and as a result there is now a total of \$2,951.52 in outstanding utilities.

The landlord is therefore requesting an Order of Possession for as soon as possible, and an order for the outstanding rent and utilities. He is also requesting recovery of his filing fee.

The tenant testified that:

- Although the agreement was written up as a tenancy agreement, verbally, they had a rent to purchase agreement which was not put in writing.
- Further in a meeting she had with the landlord in April 2011 he agreed to give her three months rent free, and she made a note of that at the time although again the landlord did not sign that agreement.

- Therefore the rent for July 2011 and August 2011 is part of the free rent promised by the landlord.

The tenant therefore believes:

1. This is not a tenancy agreement, it is a purchase agreement.
2. If it is found to be a tenancy agreement, no rent is owed and therefore the notice should be cancelled.

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

- They had discussed the possibility of the tenant purchasing the rental unit however the tenant never made an offer to purchase and no agreement was ever entered into.
- This was strictly a rental and not a rent to own agreement.
- He did have a meeting with the tenant in April 2011 but he never agreed to give her three free month's rent.

Analysis

It is my decision that the tenant has not met the burden of proving any of her claims.

The tenant claims that there was a purchase agreement however has provided no evidence in support that claim, and the tenant claims that the landlord offered her three months re-rent however again she has supplied no evidence in support that claim other than a note written by herself that has not been signed by the landlord, and certainly cannot be considered an agreement between the parties.

Therefore it is my finding that the tenant does owe rent for the months of July 2011 and August 2011, and I will not set the Notice to End Tenancy aside.

It is also my finding that the tenant has failed to pay the utilities that she was required to pay under the tenancy agreement.

I therefore allow the landlords request for an Order of Possession, and I allow the following portions of the monetary claim:

Rent outstanding for July 2011	\$3600.00
Rent outstanding for August 2011	\$3600.00
Utilities outstanding	\$2951.52
Filing fee	\$100.00
Total	\$10,251.52

Conclusion

Tenant's application

The tenant's application is dismissed without leave to reapply.

Landlord's application

I have issued an Order of Possession to the landlord for two days after service on the tenant.

I have allowed a monetary claim of \$10,251.52, and I therefore order that the landlord may retain the full security deposit of \$1800.00 and I have issued a monetary order in the amount of \$8,451.52.

The landlords claim for damages to the rental unit is 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: August 12, 2011.

Residential Tenancy Branch