



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *CNR, FF*

Introduction

This hearing dealt with an application by the tenant for an order to set aside a ten-day notice to end tenancy for nonpayment of utilities. The tenant also applied for a monetary order for the landlord's portion of utilities and for the recovery of the filing fee.

Both parties attended the hearing and had opportunity to be heard. Both parties acknowledged receipt of each other's evidence.

Issue to be Decided

Does the landlord have grounds to end this tenancy? Is the tenant entitled to a monetary order for the landlord's portion of utilities and for the recovery of the filing fee?

Background and Evidence

The tenancy began on September 15, 2017. A copy of the tenancy agreement was filed into evidence. The monthly rent was \$2,400.00 per month due on the first of the month and the tenant was responsible for the cost of utilities.

Sometime during the tenancy, the tenant sublet space inside the home for a monthly rent of \$1,000.00. When the landlord found out, the parties came to an agreement to increase the rent to \$2,700.00. Sometime later, the landlord's ex spouse started occupying a portion of the rental unit. The parties came to an agreement to lower rent to \$2,000.00. There was no written tenancy agreement after the initial one and all arrangements were verbal.

A disagreement arose regarding the payment of utilities and the tenant voiced her objections about paying the entire cost of utilities when the landlord's ex spouse was occupying a portion of the rental unit. The tenant agreed that she held back paying the full bill and the utility company sent a warning letter to the landlord.

On December 17, 2022, the landlord served the tenant with a ten-day notice to end tenancy for \$289.00 in unpaid utilities. The tenant disputed the notice in a timely manner and also paid the utility bill on December 20, 2022. The landlord agreed that the utility bill was all paid up as per the tenant's testimony.

The tenant also stated that the landlord owes her a portion of utilities and applied for a monetary order in the amount of \$205.20. The landlord denied owing this amount. The issue was discussed at length. Eventually, the parties agreed that there was no written agreement regarding the splitting of the utilities.

Analysis:

Based on the sworn testimony of both parties, I find that the tenant received the notice to end tenancy for unpaid utilities on December 17, 2023 and paid the outstanding amount on December 20, 2023. I find that the tenant paid utilities within five days of receiving the notice to end tenancy, pursuant to Section 46 to set aside the notice to end a residential tenancy. Accordingly, the notice to end tenancy is set aside and the tenancy will continue.

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, both parties provided conflicting testimony about the payment of utilities. The tenant stated that the landlord agreed to pay a portion of utilities while the landlord stated that the rent was reduced and the tenant is responsible for the full payment of utilities. In the absence of any documentation to support the tenant's testimony of a verbal agreement regarding the payment of utilities, I must accept the landlord's version that the tenant was provided a reduced rent of \$2,000.00 and is responsible for the cost of utilities.

Accordingly, the tenant's application for a monetary order for a portion of the utilities is dismissed.

I further find that at the time the landlord served the notice to end tenancy, the tenant owed utilities. Therefore, the tenant is responsible for the cost of disputing the notice. The tenant's application for the recovery of the filing fee is dismissed.

Conclusion

The notice to end tenancy is set aside and the tenancy will continue.

The remainder of the tenant's application is dismissed without 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: January 31, 2023

Residential Tenancy Branch