



# Dispute Resolution Services

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

## **Decision**

**Dispute Codes:** MNR, OPR, FF

### **Introduction**

This Dispute Resolution hearing was convened to deal with an Application by the landlord for an Order of Possession based on the Ten-Day Notice to End Tenancy for Unpaid Rent dated August 2, 2008 and a monetary order for rent owed. Although served with the Application for Dispute Resolution and Notice of Hearing in person on August 18, 2008, the tenant did not appear.

### **Issue(s) to be Decided**

The landlord was seeking an Order of Possession and a monetary order claiming \$400.00

The issues to be determined based on the testimony and the evidence are:

- Whether the landlord is entitled to an Order of Possession based on the Ten-Day Notice to End Tenancy under section 46
- Whether the landlord has proven that the landlord is entitled to monetary compensation under section 67 for rental arrears owed

### **Background and Evidence**

The landlord testified that the tenancy began approximately one year ago, at a rate of \$450.00 per month and that there was no written tenancy agreement nor was a security deposit taken by the landlord. The landlord submitted into evidence a copy of the Ten-Day Notice to End Tenancy for Unpaid Rent dated August 2, 2008 which the landlord

testified was served to the tenant in person on the same date. The effective date for ending the tenancy was August 12, 2008.

The landlord testified that the tenant had damaged the door of the unit and that the landlord had sent the tenant an invoice for the costs incurred for replacing the damaged door in the amount of \$400.00. The landlord testified that when the tenant failed to reimburse the landlord for the cost of the door, the landlord issued a One-Month Notice to End Tenancy for Cause. A copy of this notice was in evidence showing that it was issued on July 8, 2008 with an effective date of August 8, 2008 and the form indicates that the basis for the Notice was that the “*Tenant has caused extraordinary damage to the unit/site/property*”. The landlord testified that no application for dispute resolution was subsequently made based on this one-Month Notice.

However, according to the landlord's testimony, when the tenant subsequently paid the \$450.00 rent for August, the Landlord decided to confiscate \$400.00 from this rent payment and use these funds to settle the outstanding debt owed by the tenant for the damaged door. The Landlord testified that this action thereby reduced the tenant's rent payment credit to \$50.00 that was applicable to rent for the month of August and caused a rent deficiency of \$400.00 rent owing. The Landlord testified that this was the basis upon which the 10-Day Notice to End Tenancy for Unpaid Rent was issued.

### **Analysis**

Section 26 of the Residential Tenancy Act, (the Act) requires that a tenant pay rent when it is due under the tenancy agreement and section 46 of the Act provides that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

In this instance the tenant did pay the rent when the rent was due. However, according to the landlord, because the tenant was not complying with the tenant's other responsibilities under the Act by damaging the door and failing to compensate the

landlord for the costs of replacing the damaged door, the landlord took action by crediting a portion of the money paid for rent towards the tenant's debt for damages.

The Act provides a remedy to a party who suffers a loss or damages stemming from the other's non-compliance with the Act. Section 7 states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results and section 67 states that if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the Dispute Resolution Officer may determine the amount of, and order that party to pay, compensation to the other party.

In this instance, the Landlord did not follow the provisions of the Act by wrongfully allocating rent money to be used towards a debt owed for damages. In regards to the unpaid damages, the landlord could have, and should have, made application for compensation under section 67 of the Act.

In fact, the tenant did pay the rent when it was due and therefore the landlord was not at liberty to issue a notice to End Tenancy for Unpaid Rent under section 46.

### **Conclusion**

Based on the above facts I find that the Landlord is not entitled to an Order of Possession and I hereby dismiss the Landlord's application without leave to reapply

September 15, 2008

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