



# Dispute Resolution Services

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

## **Decision**

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

## **Introduction**

This Dispute Resolution hearing was convened to deal with an Application by the landlord for an Order of Possession based on the Notice to End Tenancy for Unpaid Rent dated August 12, 2008, a monetary order for rent owed and for compensation for damage or loss under the Act and an order to retain the security deposit in partial satisfaction of the claim. 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 for a total claim of \$1,200.00

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 10-Day Notice to End Tenancy under section 46 and
- Whether the landlord is entitled to monetary compensation under section 67 of the *Act* for rental arrears owed, damages or loss of rent. This determination is dependant upon answers to the following questions:
  - Has the landlord submitted proof that the specific amount of rent being claimed is validly owed by the tenant to this landlord?

- Has the landlord submitted proof that a claim for damages or loss is supported pursuant to *section 7* and *section 67* of the *Act*?

### **Background and Evidence**

The landlord submitted into evidence a copy of the 10-Day Notice to End Tenancy dated August 12, 2008, that the landlord testified was served by giving the notice to the tenant on the same date of August 12, 2008. The effective date to end the tenancy was August 22, 2008. The landlord testified that the rent was \$500.00 per month and that the tenant failed to pay all of the rent for the month of August, 2008, and also did not pay any rent for the month of September 2008. In addition, the landlord is claiming for loss of rent for the month of October, 2008. The landlord did not submit into evidence a copy of the tenancy agreement nor any copies of the financial statements of the tenant's rental account to verify the claimed arrears.

### **Analysis**

#### Order of Possession

Based on the testimony of the parties, I find that the tenant was served with a Ten-Day Notice to End Tenancy for Unpaid Rent. I find as a fact that the tenant has not paid the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice. Based on the above, I find that the landlord is entitled to an Order of Possession

#### Monetary Order

Although the landlord did not furnish any documentary evidence regarding the amount of rent charged under the tenancy agreement nor any copies of the tenant's account statements, I accept the landlord's affirmed verbal testimony that the amount of rent claimed for August and September 2008, is owed by this tenant to the Landlord and

that the tenant has committed a violation of section 26(1) of the Act by failing to pay rent when rent is due. Therefore I find that a monetary order for rent owed is warranted.

In regards to the loss of rent of \$500.00 for the month of October, 2008 and any other claims by the landlord for monetary compensation for loss or damage to the suite, I note that section 7(a) of the Act permits one party to claim compensation from the other for costs that result from a failure to comply with this Act, the regulations or their tenancy agreement. I note that there would be a violation of the Act under section 37(2)(a) should the tenant fail to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear upon vacating it. However, section 7(2) of the Act also states that a landlord or tenant who claims compensation must first take whatever steps are reasonable to minimize the loss.

Because the tenant has not yet vacated the suite, I find that there exists no violation of the Act in regards to the condition of the unit upon vacating. I find that damages pursuant to section 32(2)(a) naturally require that this particular section of the Act has already been contravened. A potential contravention, as put forward by this landlord, will not suffice.

Moreover, in addition to proving that a violation of the Act or agreement has already occurred, there must be proof that a monetary loss has already occurred or is at least imminent. In any claim for damages, the burden of proof is on the claimant to establish and verify that the claimant has actually suffered the compensable loss which was caused by the respondent. I find that the landlord has not yet endured any loss of rent for October 2008 at this time. Finally, a claimant is required to prove that reasonable steps were taken to minimize the amount of the damages and I find that it is premature to make a conclusive determination as to the extent of the damages or losses given the factors discussed above. For example, even if turned out that the unit was not rentable until after October 1, 2008, this would not automatically banish the possibility of re-renting in mid-October if it turns out that this is the earliest opportunity.

Therefore, I must dismiss the portion of the landlord's claim relating to monetary compensation for the loss of rent for the month of October 2008, with leave to reapply in future, should this loss transpire, along with any further damages that may also be assessed once the tenancy has ended.

I find that the landlord has established a total monetary claim of \$750.00 comprised of \$200.00 rental arrears for the month of August 2008, \$500.00 rent owed for the month of September and the \$50.00 fee paid by the Landlord for this application. I order that the landlord retain the security deposit and interest of \$251.10 in partial satisfaction of the claim leaving a balance due of \$498.90

### **Conclusion**

Under *section 55* of the *Act*, and based on the above facts I find that the Landlord is entitled to an immediate Order of Possession and I hereby issue this order. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

Based on the testimony and evidence presented during these proceedings, I grant the landlord a monetary order under section 67 of the *Act* for \$498.90. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

September 15, 2008

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