



# Dispute Resolution Services

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

## Decision

Dispute Codes: OPR, MNR, FF

### Introduction

This hearing dealt with an application by the landlords for an order of possession and a monetary order. The hearing began on August 21, with both parties in attendance, at which time an adjournment was requested by the tenant and granted. The adjournment was granted because the tenant claimed he had documentary evidence which would answer the landlords' claim for unpaid rent but was unable to access that evidence because of a computer virus. The hearing was adjourned for more than 5 weeks to give the tenant an opportunity to seek expert assistance in retrieving the documents on the computer. The tenant did not participate in the reconvened hearing.

Immediately prior to the start of the hearing, a faxed message was received from the tenant by the Residential Tenancy Branch. In that message the tenant stated that he was ill and could not participate in the hearing and also stated that it had been discovered that it was not a computer virus which had prevented him from accessing the documents on his computer but a hard drive failure. In the message the tenant claimed that a technician was working on the computer but required more time to retrieve the documents. The tenant provided no supporting evidence to show that the computer is currently in the care of a technician or to prove that he acted quickly to repair the computer.

The Residential Tenancy Rules of Procedure provide criteria for determining whether to grant an adjournment. These criteria include the following:

- a) the oral or written submissions of the parties;
- b) whether the purpose for which the adjournment is sought will contribute to the resolution of the matter in accordance with the objectives set out in Rule 1 [objective and purpose];
- c) whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether a party had sufficient notice of the dispute

resolution proceeding;

- d) the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and
- e) the possible prejudice to each party.

At the original hearing the tenant was not able to identify the documents which were on his computer except to say it would prove that there existed an agreement between he and the landlords for work in lieu of rent and that he had receipts showing what he had spent on materials for the rental unit. The tenant was unable to say why he did not have hard copies of the receipts. Having considered the tenant's written request for an adjournment, I determined that the tenant did not have sufficient grounds for a further adjournment. While the documents to which he referred may be relevant, there is question as to whether they exist when hard copy receipts surely must have been issued to the tenant at the time he allegedly made purchases for the rental unit. The tenant clearly had sufficient notice of the hearing and had what in my view is ample opportunity to have his computer repaired. The tenant provided no independent evidence to show that a technician was working on the computer and did not provide the date on which the computer was made available to the technician. The landlords made their application on July 21 and served the tenant within 3 days of having made that application, which gave the tenant more than two months to have the computer repaired. I determined that the tenant's need for an adjournment is directly related to his own neglect in preparing his response. Although the tenant stated that he was ill and could not participate in the hearing, I note that the hearing was conducted by conference call, which would have not required any effort beyond making a telephone call, which might be considered equally or even less strenuous to the effort required to send a fax. Further, the Residential Tenancy Rules of Procedure require the party requesting an adjournment to attend the hearing to request an adjournment or do so through the services of an agent or to submit their request 3 days in advance. I found that the tenant failed to comply with the requirements of the Rules of Procedure with respect to his request and elected to proceed with the hearing.

At the hearing the landlords confirmed that they were limiting their claim to \$25,000.00 and abandoned that amount in unpaid rent which exceeded \$25,000.00 in order to bring

their claim within the jurisdiction of this tribunal. At the original hearing date the parties agreed that the landlords were entitled to an order of possession effective August 31 and an interim decision and order of possession were issued after that hearing.

#### Issue(s) to be Decided

Are the landlords entitled to recover \$25,000.00 in unpaid rent?

#### Background and Evidence

The landlords testified that the tenant was obligated to pay \$2,600.00 per month in rent, which rent was due on the 15<sup>th</sup> day of each month. The landlords testified that at the end of 2007, the tenant was \$10,000.00 in arrears. The landlords further testified that although the tenant occupied the rental unit until early in September 2008, no rent whatsoever was paid in 2008 leaving the tenant \$19,500.00 in arrears for 2008. The total arrears are \$29,500.00.

At the first date set for the hearing the tenant participated in the hearing and acknowledged the outstanding amount, but testified that he and the landlords had an arrangement whereby the tenant would renovate the rental unit in lieu of paying rent. The landlords denied that any such arrangement existed.

The landlords testified that they did not press the issue of unpaid rent because the tenant was going through a divorce and continually insisted that arrears would be paid through the proceeds of the matrimonial home which was being sold. The landlords provided a letter from the tenant to this effect.

#### Analysis

Although the landlords bear the burden of proving their claim, the tenant bears the burden of proving that rent was paid. The tenant did not dispute that he had not paid the amount claimed and based his defense solely on his claim that he and the landlord's had an agreement that rent would be reduced in accordance with work performed on the rental unit. The tenant testified that there was such an agreement, but apart from that bald statement, submitted no evidence to support his testimony. I find that the tenant has failed to prove that any such agreement existed. I find the landlords have

met the burden of proving that rent was not paid and have thereby established their entitlement to recover \$25,000.00 in unpaid rent.

Conclusion

I find that the landlord is entitled to an award of \$25,000.00 which is inclusive of the filing fee paid to bring this application. I grant the landlord an order under section 67 for the sum of \$25,000.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated September 29, 2008.