



Dispute Resolution Services

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

DECISION AND REASONS

Dispute Codes:

OPC, OPR, MNR, MNSD, MNDC, CNR, MNR, FF.

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*.

The landlord applied for the following:

- An order of possession pursuant to Section 55;
- A monetary order for unpaid rent and utilities, pursuant to Section 67;
- An order to retain all or part of the security deposit pursuant to Section 38;
- A monetary order for the recovery of the filing fee, pursuant to Section 72.

The tenant applied for the following:

- An order to cancel the notice to end tenancy for cause, pursuant to Section 47;
- A monetary order for the cost of emergency repairs pursuant to Section 67;
- An order to seek the landlord's action to make repairs, pursuant to Section 32.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. On the basis of the solemnly affirmed evidence presented at the hearing, a decision has been reached.

Issues to be decided

Is the landlord entitled to an order of possession for cause and unpaid rent, to retain the security deposit and to recover the fee to file this application?

Is the tenant entitled to a monetary order for the cost of repairs?

Background and Evidence

Based on the sworn testimony of both parties, the facts are as follows:

The ten day notice to end tenancy, dated December 24, 2008 was served on the tenant on December 24, 2008, by way of personal service. At the time, of the hearing, the tenant had paid rent for December 2008 and the landlord issued a receipt for use and occupancy only. The tenant is currently in occupation of the suite and has not paid rent for January 2009.

The landlord testified that since the start of the tenancy in September 2008, the tenant has not paid rent on time. The landlord also stated that the tenant did not fulfil the tenant's obligations with regard to registering the utilities in the tenant's name and currently owes \$200.00 for utilities. The landlord is applying for an order of possession and a monetary order for rent for January (\$750.00), utilities (\$200.00) and the filing fee (\$50.00), for a total of \$1000.00.

The tenant stated that the landlord agreed to allow the tenant to replace a refrigerator but did not reimburse the tenant for the same. The tenant did not submit any evidence to support this claim. The tenant agreed that rent for January 2009 and the utilities for a total amount of \$950.00 is owed to the landlord.

Analysis

Based on the sworn testimony of both parties, I find that the tenant received the notice to end tenancy for unpaid rent, on December 24, 2008 and did not pay rent within five days of receiving the notice to end tenancy nor did the tenant make application, pursuant to Section 46 to set aside the notice to end a residential tenancy and the time to do so has expired. In these situations, the *Residential Tenancy Act* provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the Notice. Pursuant to section 55(2), I am issuing a formal order of possession effective two days after service on the tenant. The Order may be filed in the Supreme Court for enforcement.

I accept the landlord's evidence in respect of the monetary claim. I find that the landlord

is entitled to a total of \$1000.00. I order that the landlord retain the security deposit and interest of \$428.85 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act*, for the balance due of \$623.56. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord an order of possession effective two days after service on the tenant and a monetary order in the amount of **\$623.56**.

The tenant's application is dismissed in its entirety.

Dated January 29, 2009.
