



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

## Decision

### Dispute Codes:

**OPR, MND, MNR, FF**

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order for Possession, a Monetary Order for damage to the unit, unpaid rent, and to recover the filing fee for this application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, to cross-examine the other party, and make submissions to me.

### Issue(s) to be Decided

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

- Whether the landlord is entitled to an Order of Possession under Section 55 of the *Residential Tenancy Act (Act)* for unpaid rent
- Whether the landlord is entitled to a monetary claim under section 67 of the *Act* for damage to the unit
- Whether the landlord is entitled to a monetary claim for unpaid rent
- Whether the landlord is entitled to a monetary claim to recover the filing fee under section 72(1) of the *Act*

## Background and Evidence

The tenancy began on July 6, 2008 for a 12 month fixed term with an expiry date of June 30, 2009. The tenant paid a security deposit of \$375.00 on July 6, 2008. Rent is \$750.00, payable on the first of each month.

Service of the 10 Day Notice to End Tenancy was not effected as required by section 52 (e) of the *Residential Tenancy Act* as the landlord failed to serve the notice in the approved form. The landlord has withdrawn his application for an Order of Possession.

The landlord did not submit evidence in support of their monetary claim for damage to the unit and has withdrawn his application for a monetary order for damages.

The landlord's agent testified that the tenant is continuously late paying the rent and based on the landlord's receipts \$750.00 was paid on October 17, 2008 for October rent, \$750.00 was paid on November 27, 2008, \$700.00 was paid on December 23, 2008, and \$650.00 was paid February 18, 2009 towards February rent.

The tenant testified that the landlord reduced the rent to \$700.00 effective November 2008 as mould was detected in the third bedroom, rendering it unusable.

The landlord denied that he offered a reduction in rent.

The landlord's agent testified that the landlord told the tenant that his rent would be increased to \$800.00 effective the beginning of January 2009 as the tenant allowed another person to move into the rental unit.

The tenant confirmed that a male friend moved into the rental home on January 5, 2009 to assist with the cost of rent and the landlord was aware of this as the landlord refused to sign the friend's application to confirm rental status for Social Assistance.

The tenant testified that he has been paying the rent with his Social Assistance cheques that he began to pay the rent late after having to purchase an electric fireplace to heat the rental home for the winter months, and this is why he took in a roommate to assist with paying rent. The tenant stated that his Social Assistance cheques are issued on the last Wednesday of each month, which is when the tenant makes payments towards his rent. He advised that once he falls behind in payments it is almost impossible to get caught up again.

Both the applicant and respondent confirmed that the written tenancy agreement stipulates rent at \$750.00 per month, and that the current amount of rental arrears is \$100.00 for February 2009 and \$750.00 for March, 2009 totaling \$850.00.

### Analysis

**Order of Possession** - The landlord withdrew his application for an Order of Possession after being informed that service of the 10 Day Notice to End Tenancy was not completed in accordance with section 52 of the *Act*.

The landlord was advised that if he wanted to pursue a request for an Order of Possession based on the tenant repeatedly paying rent late, he could serve the tenant with a 1 month notice to end tenancy and apply for a new dispute resolution hearing pursuant to section 47(1) of the *Act*.

**Monetary Order for damage to the unit** – The landlord withdrew his monetary claim for damage to the unit.

I find that the landlord is not entitled to recover the filing fee from the respondent based on his withdrawal of the request for an Order of Possession and withdrawal of his monetary claim for damage to the unit.

**Monetary Order for unpaid rent** - The tenant has been forthright in informing the landlord that he has been paying his rent with payments he receives from Social Assistance, and that it is his intention, with bringing in a room mate, to get current with his rent payments as soon as possible.

When asked how the applicant wished to proceed they advised that they were willing to withdraw their monetary claim for unpaid rent and negotiate a payment arrangement with the tenant to reinstate the tenancy.

**Mediation took place whereby the applicant and respondent came to agree on the following and I find that:**

- 1) the current rental arrears are \$100.00 for February 2009 and \$750.00 for March, 2009 totaling \$850.00 payable in full on March 26, 2009,
- 2) April 2009 rent in the amount of \$800.00 to be paid in full on April 23, 2009,
- 3) an addendum to the current tenancy agreement will be created on or before March 31, 2009, to add the male roommate to the tenancy agreement as a co-tenant, increase monthly rent to \$800.00 effective April 1, 2009, and stipulate that rent is payable on the 1<sup>st</sup> of each month as of May 1, 2009.

If any of these payment terms are not upheld by the tenant the landlord is entitled to issue a 10 Day Notice to End Tenancy for Unpaid Rent and apply for an Order of Possession through dispute resolution or direct request pursuant to the *Residential Tenancy Act*.

### Conclusion

I make the finding that the amounts stipulated in the above mediated agreement, are owed to the landlord by the tenant, and that it is agreed by both parties that should, at any time, the tenant not comply with these payment arrangements, then the landlord is at liberty to apply for an order of possession and a monetary order.

March 24, 2009  
Date of Decision

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Dispute Resolution Officer