



## **Dispute Resolution Services**

Residential Tenancy Branch  
Ministry of Housing and Social Development

### **Decision**

#### **Dispute Codes:**

MNR

OPR

MNSD

FF

#### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on the Notice to End Tenancy for Unpaid Rent dated January 6, 2009, a monetary order for rent owed and an order to retain the security deposit in partial satisfaction of the claim.

At the outset of the hearing the landlord advised that the tenant had vacated the unit around March 4, 2009, and the request for an order of possession is therefore being withdrawn.

Although served with the Application for Dispute Resolution and Notice of Hearing in person on February 7, 2009, the tenant did not appear.

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

The landlord is seeking a monetary order claiming accrued rental arrears of \$1,600.00 owed by the tenant.

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

Whether or not the landlord is entitled to monetary compensation for rental arrears owed.

### **Background and Evidence**

The landlord submitted into evidence copies of two 10-Day Notices to End tenancy dated January 6, 2009 and February 6, 2009, a copy of the payment history, a copy of communication from the tenant alleging work performed in lieu of rent, emails between the parties and a copy of the tenancy agreement which is missing the addendum page.

The landlord testified that the tenancy began in June 2008 and no security deposit was paid. The landlord testified that the rent was set at \$1,200.00 but that the tenant had received a rent abatement of \$400.00 per month for care-taking duties and was only paying \$800.00 per month. However, these duties ended and the rent was restored to \$1,200.00 as of January 1, 2009. The landlord testified that the tenant fell into arrears having paid a total of \$6,400.00 between August 2008 and February 2009. The landlord's accounting statement shows \$800 per month charged for each month from June 2008 to December 2008 and \$1,200.00 per month charged for January and February 2009, with the total rent bill during the tenancy totaling \$8,000.00. The landlord is seeking a monetary order for the difference of \$1,600.00. The landlord stated that the tenant was given a notice to end tenancy on January 6, 2009 after which the tenant then gave notice to end the tenancy as of February 4, 2009 and the tenant finally left on March 4, 2009. Both the January 6 and February 6 notices are in evidence. The first notice shows that as of January 6, 2009 the landlord was claiming \$2,400.00 in arrears. The landlord testified that after this notice the tenant produced an invoice for work performed in lieu of rent. The landlord testified that the work and charge-backs were not approved by the landlord.

### **Analysis**

The landlord's Ten Day Notice indicated that, as of January 6, 2009, the rental arrears were \$2400.00. Records submitted by the landlord indicate that as of

January 1, 2009 the tenant had paid a total of \$5,200. 00. According to the landlord's testimony and the evidence submitted, at the rental rate being charged was \$800.00 per month for the seven months from June 4, 2008 to December 4, 2008 and \$1,200.00 per month for the month of January due on January 4, 2009. The total rent bill as of January 6, 2009 would add up to \$6,800.00 as of January 6, 2009 the arrears would total \$1,600.00, even with the January rent set at \$1,200.00. The Notice should have indicated \$1,600.00, in arrears, not the \$2,400.00 that the landlord claimed on the Ten-Day Notice.

There is the question of whether or not the ending of this tenancy would have been enforced given the serious flaw in the Notice and the fact that the tenancy agreement's fixed term clause was not initialled by the tenant. However, we are spared the necessity of determining that issue by virtue of the fact that the tenant had decided to vacate the unit, albeit under protest.

I also note that the tenant also requested receipts from the landlord, which apparently had not been issued

The question before me now is whether the damages claimed by the landlord are warranted and how much compensation should be granted. It is evident that there was some kind of unique arrangement between the parties for a reduced rent of \$800.00 for a period of time. According to the landlord, that arrangement came to an end prior to January 2009, prompting a rental rate change from \$800 per month back to \$1,200.00 per month as originally shown in the agreement. However, I find that the landlord failed to submit any evidence, other than verbal testimony, confirming either the start of, or the ending of, this financial arrangement. I find that, although the tenancy agreement indicated that there was an addendum page, this page is missing and I must conclude that perhaps it may have contained the details to explain the terms of the arrangement and reduction of the rental rate and possibly reasons why it was subsequently increased. In addition, I find that all of the tenant's communications in January make reference to a work-for-rent agreement as if it was still in effect, while the landlord's verbal testimony indicated that it was not in effect. I find that the only

written evidence indicating that the care-taking duties had come to an end was a reference by the landlord in a communication dated January 6, 2009, after the Ten-Day Notice had been served, stating, “*As discussed this morning on site be advised that you are no longer to carry out caretaker duties...*”. However, there was no mention of the rental rate changes purportedly associated with this arrangement.

In the absence of proof that the altered rental rate charged to the tenant was based on valid reasons that would be compliant with the Act and the tenancy agreement, I am not prepared to accept the claimed rental rate of \$1,200.00 for the months of January and February 2009. Accordingly, I find that the rental rate was \$800.00 per month for each month of the nine-month tenancy, equalling \$7,200.00 owed in total. I find that the tenant paid a total of \$6,400.00 during the tenancy. Therefore, I find that the landlord is entitled to a monetary claim for the shortfall of \$850.00 comprised of \$800.00 in rental arrears and the \$50.00 paid by the landlord for this application.

### **Conclusion**

I hereby grant the Landlord an order under section 67 for \$850.00. 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.

March 2009

Date of Decision

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Dispute Resolution Officer