

# Dispute Resolution Services

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

## **DECISION AND REASONS**

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

### **Introduction**

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for orders as follows:

- An order of possession pursuant to section 55;
- A monetary order to recover unpaid rent and utilities pursuant to section 67;
- An order to retain the security deposit in partial satisfaction of this claim pursuant to section 38
- An order to recover the cost of filing the Application for Arbitration pursuant to section 72.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

### **Hearing on March 11, 2009:**

The tenant failed to pay rent for February 2009 and was served with a ten day notice to end tenancy. The tenant applied for an order to cancel the notice and for compensation for loss of quiet enjoyment. This matter was heard on March 11, 2009.

During that hearing the tenant stated that he withheld rent for February 2009 because of insufferable disturbances from the occupant above. The tenant moved out on March 01, 2009 and was awarded compensation for loss of quiet enjoyment.

### **Issues to be decided**

At the start of this hearing on April 09, 2009, the landlord stated that since the tenant had moved out on March 01, 2009, an order of possession was no longer necessary. Therefore, the only issue to be resolved is whether the landlord is entitled to a monetary order to recover unpaid rent, utilities and the filing fee and to retain the security deposit in satisfaction of this claim.

### **Background and Evidence**

The landlord testified that the tenancy started on September 01, 2008 and prior to moving in, the tenant paid a security deposit of \$450.00. The monthly rent was \$900.00 due in advance on the first day of the month.

The landlord stated that after serving the tenant with a ten day notice to end the tenancy, the tenant advised him that he would move out on March 31, 2009. However, the tenant moved out on March 01, 2009. The landlord stated that the tenant did not give adequate notice to end tenancy and was therefore obligated to compensate the landlord for the loss of income for March 2009, in addition to February's rent.

The tenant argued that he was not responsible for rent for February due to the loss of quiet enjoyment as a result of the disturbances caused by the other occupant of the rental unit. The tenant also argued that he was not responsible for rent for March 2009 as the house is up for sale and the landlord did not advertise the availability of the rental suite for March.

The landlord agreed that as of this date, he has not yet placed an advertisement to find a new tenant and he also agreed that the house is up for sale.

The landlord applied for \$300.00 for utilities and the tenant agreed that he owed a portion of the utilities and would pay the landlord upon receipt of the utility bill.

### **Analysis**

#### **Landlord's claim for rent for February 2009:**

Based on the sworn testimony of both parties, I find that the tenant did not pay rent for February 2009 and pursuant to section 26(1) of the *Residential Tenancy Act*, a tenant must pay rent when it is due under the tenancy agreement whether or not the landlord complies with the Act, Regulations or tenancy agreement.

The tenant was awarded compensation for loss of quiet enjoyment in the previous hearing and therefore is not justified in holding back rent for additional compensation. The tenant is required to pay rent in the amount of \$900.00 for February 2009.

Landlord's claim for rent for March 2009:

The decision made by the dispute resolution officer dated March 11, 2009, states "*I find that the breach of the tenant's quiet enjoyment was so substantial or fundamental that it entitled him to end his tenancy without any penalty*"

Accordingly, the landlord is not entitled to loss of income for March, despite the tenant having ended the tenancy without adequate notice.

In addition, pursuant to section 7 of the *Residential Tenancy Act*, a landlord who claims compensation for loss that results from the tenant's non-compliance with this Act, Regulations or the tenancy agreement must do whatever is reasonable to minimize the loss. In this case the landlord has not made any efforts to re-rent the unit and he agreed that the house is up for sale. I find that the landlord has not taken steps to mitigate his losses and therefore is not entitled to recover his loss of income for March 2009.

Both parties have agreed to resolve their dispute regarding the utility bill. The tenant agreed to pay his portion of the utility bill upon receipt of the same.

Since the landlord has established a claim for \$900.00, I find that the landlord is also entitled to the recovery of the filing fee in the amount of \$50.00. I order that the landlord retain the security deposit of \$450.00 and interest of \$2.25 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 \$497.75. This order may be filed in the Small Claims Court and enforced as an order of that Court.

**Conclusion**

The landlord is granted a monetary order in the amount of **\$497.75**.

Dated April 14, 2009.

---

Dispute Resolution Officer