

DECISION AND REASONS

Dispute Codes:

OPR, CNR, MNR, MNSD, RR, FF

Introduction.

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

The landlord applied for an order of possession and for a monetary order for unpaid rent and the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of his monetary claim. The tenant applied for an order to cancel the notice to end tenancy and for a reduction in rent.

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

Issues to be decided

Is the landlord entitled to an order of possession and a monetary order for unpaid rent?

Is the tenant entitled to a reduction in rent due to problems with heating and electricity?

Background and Evidence

This month to month tenancy started on April 01, 2007. Rent is \$1000.00 due on the first day of each month. Prior to moving in the tenant paid a security deposit of \$500.00.

Landlord's Application

The landlord stated that the tenant failed to pay rent for September and October. On October 02, 2009, the landlord served the tenant with a ten day notice to end tenancy. The landlord has applied for an order of possession. The tenant continues to occupy the rental unit and now owes rent for November as well, for a total of \$3000.00. The landlord has applied for a monetary order for the amount of unpaid rent and for the filing fee and to retain the security deposit in partial satisfaction of his claim.

Tenant's Application

The tenant acknowledged that she owed the landlord \$3000.00 in unpaid rent. She stated that the reason for not paying rent was that the landlord did not maintain the suite in a satisfactory condition. She stated that she met with the owner in May 2009 to

discuss the issues that she was having with the heating and the electric supply. The tenant is applying for a rebate in rent for the unsatisfactory services. The tenant did not specify the amount of the reduction that she was seeking. During the hearing the tenant stated that she had plans to move out by November 30, 2009.

Analysis

Section 26 of the *Residential Tenancy Act*, states that a tenant must pay rent when it is due under the tenancy agreement whether or not the landlord complies with the *Act*, the *Regulations* or the *Tenancy Agreement*. Since the tenant has not paid rent, pursuant to section 55(2) I am issuing a formal order of possession effective on or before 1:00 p.m. on November 30. The Order may be filed in the Supreme Court for enforcement.

Since the tenancy is ending, the issue of a rent reduction is moot and accordingly dismissed. I find that the landlord has established a claim of \$3000.00 for unpaid rent. Since he has proven his case, he is also entitled to \$50.00 for the filing fee. I order that the landlord retain the security deposit of \$500.00 plus \$13.23 in accrued interest in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance of \$2,536.77. 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 on or before **1:00 p.m. on November 30, 2009**. I also grant the landlord a monetary order for **\$2,536.77**.

Dated November 20, 2009.

Dispute Resolution Officer