

## **Decision**

### **Dispute Codes:**

OPR, MNR, MNSD MNDC FF

### **Introduction**

The hearing was convened to deal with an application by the landlord for an Order of Possession, a monetary order to retain the security deposit for damages and loss. The hearing was also convened to hear a cross- application by the tenant to obtain a monetary order for money owed or compensation for damage or loss under the Act and for the return of the tenant's security deposit.

At the outset of the hearing the parties advised that the tenancy had ended. Therefore there was no need for the request for an Order of Possession to be heard.

### **Issues to be Decided for the Landlord's Application.**

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

- Whether the landlord is entitled to compensation under section 67 of the *Act* for loss of rent and damages.

### **Issues to be Decided for the Tenant's Application**

- Whether or not the tenant was entitled to a reduction in rent based on the landlord's restriction of, or failure to provide, services and facilities that were required by the Act or included in rent as part of the agreement.
- Whether the tenant is entitled to monetary compensation under section 67 of the *Act* for expenses and damages.

### **Background and Evidence**

The landlord testified that the tenancy began in November 2009 and the tenant had originally rented the upper unit, but requested to be moved to the lower unit which cost less. The landlord testified that the tenant had not yet put the hydro in their name as required. The landlord testified that the tenant was permitted to move into the lower suite and agreed to dispose of 4 bags of garbage to finish up the drywall. However, the drywall was not done. According to the landlord, the tenant also agreed as a favour to the landlord to let prospective tenants into the upper rental suite and take the security deposit and issue a receipt if necessary. The landlord testified that he had not agreed to compensate the tenant for these tasks.

The landlord testified that in December 2009 when the water froze, the landlord immediately attempted to find a plumber. However, the tenant volunteered to take a look at the problem. The landlord testified that the tenant later reported that the pipes in the pump house were frozen and that the tenant suggested installing an outlet in the pump house to install a heater. Evidently, at that point the tenant was in the process of digging up the buried pipes, which he felt were not installed deep enough. The landlord stated that he did not agree to pay the tenant and in fact succeeded in finding a plumber who appeared the following day and rectified the problem within 3 hours. The landlord testified that the plumber reported that the insulation in the pump house had been removed. This was replaced by the plumber who also installed a base-board heater. The landlord submitted copies of invoices from the plumbing contractor verifying that this work was done at the site on December 11 and 12, 2009. The landlord testified that the tenant was offered a rent abatement of \$200.00 to compensate for the time without water but instead requested a \$100.00 reduction in rent. The landlord testified that the tenant did not pay the rent for December and a Ten-Day Notice was issued on December 18, 2009. The landlord testified that he could not re-rent the unit for the month of January as the tenant had indicated that they were not going to move on the effective date of the Notice. The landlord is seeking \$1,150.00 rent owed for December 2009, and \$1,150.00 rent loss for January 2010.

The tenant testified that in November, when the landlord agreed to permit them to move into the lower unit, the tenant had to clean it first and it had to remove garbage and debris. The tenant is claiming \$210.00 to clean the suite and \$45.00 for the "dump run". In addition, the tenant showed the upper suite at the landlord's request and took the deposit from the renter on behalf of the landlord. The tenant is claiming \$220.00 for showing the suite. The tenant claimed GST on the above charges as well.

The tenant testified that the landlord had agreed to reduced rent to \$1,150.00 for the lower unit. However, when the tenant asked for compensation for cleaning and for showing the upper unit, the landlord took the position that the reduction in rent was sufficient to compensate the tenant for services to date. The tenant testified that the tenant did not agree to waive their right to be compensated as they felt that the landlord should pay the tenant's usual business rate for all work done.

The tenant testified that the unit was without water on more than one occasion for several days including 3 days in November 2009 and again in December 2009 at which time the septic field also failed. The tenant testified that when the water froze on December 8, 2009, the tenant was told by the landlord to go ahead and do what they could to try and restore the water flow. The tenant stated that after they had rented a heater and hired an electrician, they called the landlord on December 9, 2009 to advise that insulation was needed. The landlord told the tenant not to proceed with any more work, however, the water was still frozen until December 11, 2009. The tenant alleged that on December 10, 2009, because of a septic back up, the tenant was forced to use pails of water to run the sewage down the pipes. The tenant is claiming \$180.00 to thaw the water lines, \$275.00 for a heater rental, \$100.00 electrician charges and \$200.00 for other "tenant issues" with \$37.50 GST added to the above costs.

According to the tenant, on December 12, 2009, the landlord appeared and collected rent of \$1,150.00 in cash from the tenant but then declined to provide a receipt and later issued the Ten-Day Notice on December 18, 2009. The tenant stated that the landlord

also dropped off some paint and equipment for the tenant to paint the upstairs bathroom and bedroom and agreed that the tenant could bill him for the work.

The tenant took issue with the fact that the hydro in the pump house was on the tenant's account. The tenant also testified that at the end of December 2009, the landlord had fraudulently attempted to cash post-dated cheques previously issued in the amount of \$1,250.00, despite the fact that these related to the prior rental rate for the upper unit. There were insufficient funds in the account and the tenant was forced to incur NSF charges and the cost to have stop-payments issued by the bank on the cheques issued. In regards to the other claims, the tenant seeks compensation for the cost of paperwork, lost wages, fuel costs and the return of the \$575.00 security deposit. The total claim is for \$1,601.60.

### **Analysis – Landlord's Application**

The landlord has requested monetary compensation for \$1,150.00 for December's rent and \$1,150.00 loss of rent for the month of January 2010 and seeks retention of the security deposit as partial satisfaction for damages and losses being claimed by the landlord .

In regards to an Applicant's right to claim damages from the another party, Section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

I find that in order to justify payment of damages under section 67, the Applicant would be required to prove that the other party did not comply with the Act and that this non-compliance resulted in costs or losses to the Applicant, pursuant to section 7.

It is important to note that the evidence furnished by the applicant must satisfy each component of the test below:

### Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

Section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement. I find that the tenant did not pay the rent when rent was due and that this was a violation of the agreement and the Act. I find that, regardless of what transgressions may or may not have existed, the tenant did not have the right to withhold rent contrary to the Act or agreement. Therefore I find that the landlord is entitled to be paid \$1,150.00 rent for the month of December 2009.

I also find that the tenant's failure to pay December's rent, effectively terminated the tenancy with short notice to the landlord thereby making it impossible for the landlord to avoid loss of rent for January 2010 and I accept that the landlord could not possibly locate a tenant for January 1, 2010. However, to meet element 4 of the test for damages, the landlord was required to offer evidence that he had taken reasonable steps to mitigate the loss by attempting to find a replacement tenant as soon as possible. While the landlord gave verbal testimony that advertising commenced immediately, no evidence was submitted to verify this. Accordingly, I find that the landlord is only entitled to be reimbursed for a portion of the loss suffered for January 2010 in the amount of \$575.00.

The total monetary entitlement for the landlord is \$1,725.00.

### **Analysis – Tenant's Application**

In regards to the tenant's claim for costs to restore the water I find that these expenses were not adequately proven to satisfy element 2 and 3 of the test for damages.

However, I find that during the tenancy, for approximately 6 days, the services and facilities under the agreement were reduced due to frozen water and septic back-up, thereby devaluing the tenancy for those days. Accordingly, I find that the tenant is entitled to the rent abatement of \$200.00 that was offered by the landlord to affected tenants, plus a further abatement of 25% per day valued at \$9.45 per day totaling an additional \$56.71 for the 6 days.

In regard to the landlord and tenant's arrangement in which the tenant was required to clean the lower unit before moving in, I find that the tenant is entitled to 6 hours of cleaning at the rate of \$20.00 per hour totaling \$120.00 and reimbursement of the dump charges of \$45.00. In regard to the landlord and tenant's arrangement in which the tenant was required to show the upper suite, collect the deposit and give it to the landlord, I find that the tenant is entitled to a flat fee of \$75.00.

I also find that the tenant is entitled to be reimbursed the bank charges regarding the \$1,250.00 cheque that the landlord evidently tried to cash on December 30, 2009 amounting to a \$12.50 "stop-payment fee" and the \$42.50 "NSF" fee paid by the tenant.

I find that the tenant's monetary entitlement totals \$551.71.

### **Conclusion**

Based on the testimony and evidence presented during these proceedings, I find that the landlord is entitled to damages in the amount of \$1,725.00 for rent and loss of rent and the tenant is entitled to total monetary compensation of \$551.71. After setting off these two amounts there is remaining amount of \$1,173.29 in favour of the landlord. I order that the landlord retain the tenant's security deposit of \$575.00 in partial satisfaction of the claim leaving a balance due of \$598.29 still owed to the landlord.

I hereby grant the Landlord a monetary order for \$598.29. 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. The remainder of the tenant's application is dismissed without leave. Neither party is entitled to be reimbursed the filing costs.

Date of Decision: January 2010

---

Dispute Resolution Officer