

DECISION

Dispute Codes OPR MNR MNSD FF
 CNR MNDC OLC RP PSF RR FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlords and the Tenants.

The Landlords filed seeking an Order of Possession for unpaid rent, a Monetary Order for unpaid rent and utilities, to keep the security deposit in partial satisfaction of their claim, and to recover the cost of the filing fee from the Tenants.

The Tenants filed seeking Orders to cancel a notice for unpaid rent, for money owed or compensation for damage or loss under the Act, have the Landlord comply with the Act, have the Landlord make repairs to the unit, have the Landlord provide services or facilities required by law, allow the tenants reduced rent for repairs or services not provided, and to recover the cost of the filing fee from the Landlords for this application.

Service of the hearing documents by the Landlord to the Tenant was done in accordance with section 89 of the *Act*, served personally by the male Landlord to the female Tenant on August 18, 2009. The Landlord gave both hearing packages to the female Tenant.

The Landlords appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

The Tenants did not appear despite being served with notice of today's hearing in accordance with the Act and despite having their own application for dispute resolution scheduled for the same hearing date and time.

All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

Are the Landlords entitled to the following Orders: A) An Order of Possession, B) a Monetary Order for unpaid rent or utilities, and C) an Order to retain the Security Deposit, under sections 38, 55 and 67 of the *Residential Tenancy Act*?

Are the Tenants entitled to the following Orders: A) Cancel a notice for unpaid rent, B) For money owed or compensation for damage or loss under the Act, C) Have the Landlords comply with the Act, D) Have the Landlords make repairs to the unit, E) Have the Landlords provide services or facilities required by law, F) Allow the tenants reduced rent for repairs or services not provided, under sections 46, 67, 62, 32, and 65 of the *Residential Tenancy Act*?

Background and Evidence

The fixed term tenancy agreement began on April 1, 2009 and switched to a month to month tenancy after June 30, 2009. The Tenants vacated the rental unit on September 3, 2009. Rent was payable on the first of each month in the amount of \$1,100.00 and a security deposit of \$550.00 was paid on March 27, 2009. A move-in inspection report was completed in the presence of the Tenants on March 31, 2009 and a move-out inspection report was completed in the absence of the Tenants on September 3, 2009.

The Landlord testified and referred to her documentary evidence in support of her claim for a monetary order of \$360.00. The Landlords' claim consists of unpaid for August of \$200.00, late payment fees of \$25.00 each month for July 2009 and August 2009, and unpaid utilities as follows:

March 31/09 – June 25 /09	Water charges	\$44.60
Up to July 21, 2009	Natural Gas	\$16.00
July22/09 to Aug 19/09	Natural Gas	\$18.00
May 09 to July 21/09	Hydro	\$ 9.39

The Landlord referred to her written request to claim additional amounts for unpaid rent, ½ of Sept. 09 rent, utilities, and suite cleaning for the total amount of \$1,186.44. The Landlord confirmed that this amendment request was mailed to the Tenants' previous address, the rental unit after they vacated the unit.

Analysis

Landlord's Application

Based on the testimony of the Landlords, I find that the Female Tenant has been served with the Notice of Dispute Resolution Proceeding documents.

Section 89(1) of the *Residential Tenancy Act* and Section 3.1 of the *Residential Tenancy Rules of Procedures* determines the method of service for documents. The

Landlords have applied for a monetary Order which requires that the Landlords serve **each** respondent as set out under *Residential Tenancy Rules of Procedures*. In this case only one of the two Tenants has been personally served with the Notice of Dispute Resolution documents. Therefore, I find that the request for a Monetary Order against both Tenants must be amended to include only the female Tenant who has been properly served with Notice of this Proceeding. As the second Tenant has not been properly served the Application for Dispute Resolution as required, the monetary claim against the male Tenant is dismissed without leave to reapply.

The Landlords requested to amend their application to add an additional monetary claim in the amount \$1,186.44 however the Landlords have failed to prove that the Tenants have been served with the request to amend their application in accordance with section 89 of the Act. To find in favour of an application for a monetary claim, I must be satisfied that the rights of all parties have been upheld by ensuring the parties have been given proper notice to be able to defend their rights. As I have found the service of documents not to have been effected in accordance with the Act, I dismiss the Landlords' amended claim, with leave to reapply.

Order of Possession - The Landlords have withdrawn their request for an Order of Possession as the Tenants have vacated the rental unit.

Section 7(1) of the Act provides 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 the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

Unpaid Rent – The evidence supports that the Tenants failed to pay the full amount of rent for August 2009 leaving a balance owing of \$200.00, in contravention of section 26

of the Act which stipulates that a tenant must pay rent when it is due under the tenancy agreement. Based on the aforementioned I find that the Landlords have proven the test for damage or loss, as listed above, and I hereby approve their claim of \$200.00 for August 2009 unpaid rent.

Late Payment Fees – The Landlords are seeking late payment fees of \$25.00 per month, in accordance with the tenancy agreement, for July 2009 and August 2009. The evidence and testimony supports that July 2009 rent was not paid until July 5, 2009 and the August 2009 is still not paid in full. Section 7 of the Residential Tenancy Regulation provides that a landlord may charge a late payment fee if the tenancy agreement provides for that fee. Based on the aforementioned I find that the Landlords have proven the test for damage or loss, as listed above, and I hereby approve their claim in the amount of \$50.00 in late payment fees.

Unpaid Utilities – The tenancy agreement provides that the Tenants are to pay 30% of the cost of utilities and based on the evidence and testimony I find that the Tenants have failed to pay \$44.60 for water, \$34.00 for natural gas, and \$9.39 for hydro. Based on the aforementioned I find that the Landlords have proven the test for damage and loss and hereby award them \$87.99 in unpaid utilities.

Filing Fee \$50.00- I find that the Landlords have succeeded with their claim and I hereby award them recovery of the filing fee.

Monetary Order – I find that the Landlords are entitled to a monetary claim, that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit, and that the Landlords are entitled to recover the filing fee from the Tenants as follows:

Unpaid Rent for August 2009	\$200.00
Late Payment Fees for July 2009 and August 2009 (\$25.00 x 2)	50.00
Unpaid Utilities (\$44.60 Water + \$34.00 Gas + \$9.39 Hydro)	87.99
Filing fee	<u>50.00</u>
Subtotal (Monetary Order in favor of the Landlord)	\$387.99
Less Security Deposit of \$550.00 plus interest of \$0.00 from March 27, 2009 to February 8, 2010	-550.00
TOTAL OFF-SET AMOUNT DUE TO THE TENANTS	\$162.01

Tenants' Application

Section 61 of the *Residential Tenancy Act* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the Director must determine if the hearing is to be oral or in writing. In this case, the hearing was scheduled for an oral teleconference hearing.

In the absence of the Applicant Tenants, the telephone line remained open while the phone system was monitored for ten minutes and no one on behalf of the Applicant Tenants called into the hearing during this time. Based on the aforementioned I find that the Tenants have failed to present the merits of their application and the application is dismissed, without leave to reapply.

Conclusion

Landlord's Application

A copy of the Tenants' decision will be accompanied by a Monetary Order for \$162.01. The order must be served on the Landlords and is enforceable through the Provincial Court as an order of that Court.

Tenants' Application

The Tenants' application is HEREBY DISMISSED, without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 08, 2010.

Dispute Resolution Officer