

DECISION

Dispute Codes OPR MND MNR MNSD MNDC FF
 CNR FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking an Order of Possession for Unpaid Rent, a Monetary Order for damage to the unit, unpaid rent, to keep the security deposit, for money owed or compensation for damage or loss under the Act, and to recover the cost of the filing fee from the Tenant.

The Tenant filed seeking an Order to cancel a Notice to End Tenancy for Unpaid Rent and to recover the cost of the filing fee from the Landlord for this application.

Both the Landlord and the Tenant appeared by telephone conference and acknowledged receipt of the other's application and evidence. Both parties provided affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issues(s) to be Decided

Is the Landlord entitled to an Order of Possession for unpaid rent under section 55 of the *Residential Tenancy Act*?

Is the Landlord entitled to a Monetary Order a) for damage to the unit, b) for unpaid rent, c) to keep the security deposit, and d) for money owed or compensation for damage or loss under the Act under sections 38 and 67 of the *Residential Tenancy Act*?

Is the Tenant entitled to an Order to cancel a notice issued for unpaid rent under section 46 of the *Residential Tenancy Act*?

Background and Evidence

The undisputed testimony included that the fixed term tenancy began on May 15, 2007 and switched to a month to month tenancy after November 15, 2007; the Tenant

vacated the rental unit on February 15, 2010; rent as per the tenancy agreement, was payable on the fifteenth (15th) of each month in the amount of \$1,000.00; and the Tenant paid a security deposit of \$500.00 on May 5, 2007.

The Landlord advised that he is withdrawing his request for an Order of Possession as the Tenant vacated the rental unit on February 15, 2010.

The Tenant testified that he is withdrawing his application for an Order to cancel the notice to end tenancy because he has vacated the rental unit.

The Landlord testified and confirmed that the original tenancy agreement was entered into between himself, his previous spouse, and the Tenant. The male Landlord moved out of the rental unit on November 9, 2008, after separating from his spouse. The Landlord argued that he purchased the home from his previous spouse effective September 30, 2009 and moved back into the house on October 1, 2009 at which time the male Landlord became the sole Landlord.

Both parties agreed that during the male Landlord's absence from the home, a verbal agreement was entered into between the Landlords and the Tenant whereby the Tenant was allowed to reduce his rent from \$1,000.00 to \$800.00 per month.

The Landlord argued that on November 15, 2009 he verbally informed the Tenant that his rent would return to \$1,000.00 per month effective January 15, 2010.

The Tenant states that he was never informed that his rent would be increasing to \$1,000.00 and if he had, he would have made arrangements to move sooner as he could not afford to pay that amount of money. Later in the Tenant's testimony he stated that the Landlord told him just before Christmas that his rent would be going up to \$1,000.00 again.

The Landlord confirmed that receipts were not previously issued however he states that he began to issue rent receipts on October 15, 2009 and confirmed that he did not provide evidence such as a tenant ledger or copies of receipts showing past rent payments received. The Landlord is seeking a monetary claim for unpaid rent for \$200.00 for May 15, 2009, \$300.00 for June 15, 2009, \$800.00 for July 15, 2009, and \$800.00 for December 15, 2009.

The Landlord argued that he cannot re-rent the rental unit until he has an opportunity to complete repairs and so he is seeking \$1,000.00 for loss of rent for February 15, 2010

because the Tenant did not advise the Landlord that he was vacating the rental unit until he had moved.

The Tenant argued that his rent is paid in full; that he always paid cash; and he has never received a receipt for his rent payments from either Landlord. The Tenant argued that he paid \$800.00 cash on September 15, 2009; \$800.00 cash on October 15, 2009; \$800.00 cash on November 15, 2009; \$700.00 cash on December 15, 2009; \$300.00 money order on January 4, 2010 to clear up the outstanding rent that was listed on both of the 10 Day Notices to end Tenancy dated Dec 2, 2010 and Dec 30, 2010; \$1,000.00 on January 15, 2010. The Tenant argued that he does not owe February 15, 2010 rent because he moved out of the rental unit based on the notices to end his tenancy.

The Landlord is also seeking damages to the rental unit, which is a house that was built in 1973 and the rental unit in the basement was constructed in 2007. The Landlord's claim for damages consists of \$80.00 for carpet cleaning. \$145.00 to replace an interior door that is an original interior door, and \$369.00 to replace an exterior door that has dents and black marks on it from being kicked by the Tenant's girlfriend. The Landlord confirmed that none of the damages have been repaired and the amounts claimed are estimated costs.

The Tenant confirmed that he did not have the carpet steam cleaned and argued that there had been a previous flood and he was concerned that if he had the carpet cleaned it would be damaged. The Tenant argued that he paid \$1,000.00 to the Landlord on January 15, 2010 because he was including an additional \$200.00 for the repair of the interior door and that there is nothing wrong with the exterior door.

Analysis

All of the testimony and documentary evidence was carefully considered.

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

Landlord's Application

After careful review of the evidence I find that the parties entered into a verbal agreement, to reduce the Tenant's rent from \$1,000.00 per month to \$800.00 per month and that the male Landlord informed the Tenant, prior to December 25, 2009, that the rent would be returned to the \$1,000.00, as per the tenancy agreement, effective January 15, 2010.

Both parties confirmed that the Tenant primarily paid his rent in cash and there is opposing testimony whether the Tenant was issued rent receipts from October 15, 2009 to January 15, 2010.

Upon review of the 10 Day Notices submitted into evidence by both parties and dated Dec 2, 2010, Dec 30, 2010, and Dec 30, 2009, I note that there is no mention of outstanding rent for May 2009, June 2009, July 2009, or December 2009 listed on any of the 10 Day Notices and that all three notices reference unpaid rent of \$200.00 for September 2009 and \$100.00 for November 15, 2009.

The testimony confirms that the Tenant provided the Landlord with a money order on January 4, 2010 in the amount of \$300.00 to pay the outstanding rent, in full, that is referred to on the 10 Day Notices. Based on the aforementioned I find that the Tenant paid all outstanding rent, as demanded on the 10 Day Notices, up to the latest issue date of December 30, 2009. The Landlord has therefore failed to satisfy the burden of proof that additional rent is unpaid; therefore I dismiss the Landlord's claim of \$2,100.00 of unpaid rent.

Section 45 of the Act provides that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and is on the day before the day in the

month that rent is due. The Tenant argued that he did not have to provide notice to end the tenancy because he was issued Notices by the Landlord. In this case I find it was reasonable for the Landlord to conclude that the Tenant was not moving out of the rental unit, based on the notices, because the Tenant filed an application for dispute resolution to dispute the Notices. Therefore the Landlord has not had an opportunity to re-rent the unit and has suffered a loss for February 15, 2010 rent. Based on the aforementioned I find that the Landlord has proven the test for damage or loss, as listed above, and I hereby approve the Landlord's claim for loss of rent in the amount of \$1,000.00.

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the repair or replacement cost by the depreciation of the original item.

With respect to the Landlord's claim of \$594.00 in damages (\$80.00 carpet + \$145.00 interior door + \$369.00 exterior door) I find that at the time of the hearing there was insufficient evidence to support the age of the items being claimed, the condition of these items at the onset of the tenancy, the condition at the end of the tenancy, and the actual cost to repair the alleged damage. Based on the aforementioned I find that the Landlord has failed to prove the test for damage or loss, as listed above, and I hereby dismiss his claim of \$594.00 in damages,

As the Landlord has been partially successful with his claim I hereby award him recovery of the \$50.00 filing fee.

Landlord's Monetary Claim – The Landlord withdrew his request for an Order of Possession.

I find that the landlord is entitled to a monetary claim, that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit, and that the Landlord is entitled to recover the filing fee from the Tenant as follows:

Loss of Rent for February 15, 2010 to March 14, 2010	\$1,000.00
Filing fee	50.00
Subtotal (Monetary Order in favor of the landlord)	\$1,050.00
Less Security Deposit of \$500.00 plus interest of \$12.52 from May 5, 2007 to February 17, 2010	-512.52
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$537.48

Tenant's Claim - The Tenant withdrew his application for an Order to cancel the notice to end tenancy.

As the Tenant withdrew his application I decline to award recovery of the filing fee.

Conclusion

I HEREBY FIND in favor of the Landlord's monetary claim. A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$537.48**. The order must be served on the respondent Tenant and is enforceable through the Provincial Court as an order of that Court.

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 17, 2010.

Dispute Resolution Officer