

## **DECISION**

Dispute Codes      OPR MNR ET

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for unpaid rent, a Monetary Order for unpaid rent, and to end the tenancy early.

Service of the original hearing documents was done in accordance with section 89 of the *Act*, served personally by the Landlord to the male Tenant on January 21, 2010, at the rental unit in the presence of a witness. Copies of the amended application for dispute resolution were posted to the Tenant's door on February 17, 2010.

The Landlord and his Agent gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form. No one attended the teleconference hearing on behalf of the Tenants, despite the male Tenant being served with notice of the hearing in accordance with the *Act*.

### 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 for unpaid rent or utilities under section 67 of the *Residential Tenancy Act*?

Is the Landlord entitled to an Order to end the tenancy early under section 56 of the *Residential Tenancy Act*?

### Background and Evidence

The Landlord and Tenants entered into a written tenancy agreement effective December 1, 2008. The base rent payable is \$550.00 per month and for the first four months of the tenancy (December 2008, January 2009, February 2009, March 2009) the Tenant's were required to pay an additional \$50.00 per month to offset the additional cost of heating the rental unit. Rent is payable on the first of each month and the Tenant did not pay a security deposit.

The rental unit is located in a building owned by the Landlord which has a commercial space and two self contained residential units with separate entrances.

The Landlord testified and confirmed that he entered into a verbal agreement with the male Tenant whereby it would be agreed that the male Tenant would perform some work around the property, such as mowing the lawn, installing carpet in the commercial office space, general yard maintenance, shovel snow, and pick up garbage around the property, in exchange for a reduction in rent. The Landlord argued that he never discussed a dollar amount with the male Tenant for how much his labour would be worth and the Landlord stated that he expected the Tenant to provide him with a list of how many hours he worked at each task and then they would negotiate a dollar amount to be taken off of the rent. The Landlord stated "we never talked money specifically. I only said that if you do the work I'll take money off your rent".

The Landlord advised that the Tenants have failed to pay anything towards rent for the six month period of April 2009 to September 2009. The Landlord argued that he had a verbal conversation with the male Tenant in early October 2009 when he reminded the Tenant that he could not live there for free and he told the Tenant they were behind in their rent. The Landlord referred to his evidence of a letter dated October 26, 2009 titled "Notice of Eviction" where he informs the Tenant that he owes September and October 2009 rent. This letter was posted to the Tenants' door on October 26, 2009. The Landlord confirmed that he was out of the country during the month of September 2009 and that he did not inform the Tenant until October 2009 that he would have to start paying his rent in accordance with the tenancy agreement.

The Landlord testified that it was during early November 2009 when he realized that the female Tenant was no longer residing at the rental unit and that the male Tenant had brought in another female to reside with him.

The Landlord stated that he continued to contact the male Tenant requesting rent however the Tenant refuses to speak to the Landlord and threatens the Landlord to stay away from the rental unit.

A 10 Day Notice to End Tenancy for unpaid rent was issued for \$1,650.00 of unpaid rent and posted to the Tenants' door on December 3, 2009 at 3:50 p.m. in the presence of a witness.

The Landlord is seeking an Order of Possession and a Monetary Order for unpaid rent of \$3,600.00.

#### Analysis

All of the testimony and documentary evidence was carefully considered.

Given the evidence before me, and in the absence of any evidence from the male Tenant who did not appear despite being properly served with notice of this proceeding, I accept the version of events as discussed by the Landlord and corroborated by his Agent.

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 Landlord has applied for a monetary Order which requires that the Landlord 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 male Tenant who has been properly served with Notice of this Proceeding. As the female Tenant has not been properly served the Application for Dispute Resolution as required, the monetary claim against the female Tenant is dismissed without leave to reapply.

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

The Landlord argued that he had a verbal agreement whereby the male Tenant would do some work for a "reduction in rent" and it was not an opportunity for the Tenant to live free of charge.

In the case of verbal agreements, I find that where verbal terms are clear and both the Landlord and Tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, or when one party is absent, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes as they arise. Therefore I must rely on the documentary evidence and history of events.

Based on the evidence before me I find that the Landlord made no attempt to collect the unpaid rent for the months of April 2009, May 2009, June 2009, July 2009, and August 2009. Therefore the Landlord did not mitigate his losses for these months and one

could reasonably conclude that the five month's rent was paid in exchange for the male Tenant's labor.

With respect to September 2009 rent, the evidence supports that the male Tenant was not advised that he was required to pay rent for September 2009 until the October 26, 2009 notice of eviction letter was posted to his door. It would be reasonable for a person to conclude that had they not been required to pay rent for the previous six months that they would not have to pay rent for September, unless they were provided notice to the contrary. Therefore I dismiss the Landlord's claim for unpaid rent for September 2009.

The Landlord testified that he advised the male Tenant at the beginning of October 2009 that he was required to start paying rent again. This testimony was corroborated by the Landlord's Agent and the notice of eviction letter dated October 26, 2009. Therefore I find that the Tenant has failed to pay his rent, in accordance with section 26 of the Act which provides that a tenant must pay rent when it is due in accordance with the tenancy agreement. Based on the aforementioned I find that the Landlord has proven the test for damage or loss, as listed above, and I hereby approve his claim for unpaid rent in the amount of \$2,750.00 which is comprised of 5 months' rent @ \$550.00 per month (October 2009, November 2009, December 2009, January 2010, February 2010).

The Landlord requested payment for March 2010 rent however he has also requested an Order of Possession; therefore the Landlord may have an opportunity to recover some of his losses for March 2010 if he is able to re-rent the unit by mid March. Therefore I dismiss the Landlord's claim for unpaid rent for March 2010 with leave to reapply.

I find that the landlord has met the requirements for the 10 day notice to end tenancy pursuant to section 46(1) of the *Act*, that the Tenants failed to pay the rent within 5 days after receiving this notice, and that the Tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit to which the notice relates pursuant to section 46(5) of the *Act*. Based on the aforementioned I approve the Landlord's request for an Order of Possession.

An Order of Possession has been granted for unpaid rent, therefore an Order to request an early end to tenancy is not required. I therefore dismiss the Landlord's request for an Early End to the Tenancy.

I find that the Landlord has succeeded with his application and I hereby award recovery of the \$50.00 filing fee.

**Monetary Order** – I find that the Landlord is entitled to a monetary claim against the male Tenant as follows:

Unpaid Rent for October 2009, November 2009, December 2009, January 2010, and February 2010	\$2,750.00
Filing fee	50.00
<b>TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD</b>	<b>\$2,800.00</b>

### Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenant**. This order must be served on the Respondent Tenant and may be filed in the Supreme Court and enforced as an order of that Court.

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 **\$2,800.00**. The order must be served on the respondent 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: March 08, 2010.

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Dispute Resolution Officer