

DECISION

Dispute Codes OPR OPC MNR FF
 CNC OLC 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 Cause, an Order of Possession for unpaid rent, a Monetary Order for unpaid rent, and to recover the cost of the filing fee from the Tenant for this application.

The Tenant filed seeking an Order to cancel the notice to end tenancy for cause, to obtain an Order to have the Landlord comply with the Act, and to recover the cost of the filing fee from the Landlord for this application.

Service of the hearing documents by the Landlord to the Tenant was done in accordance with section 89 of the *Act*, sent via registered mail. The Tenant confirmed receipt of the Landlord's Notice of Dispute Resolution hearing package.

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The Landlord and Tenant appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

Is the Landlord entitled to Orders of Possession for a) unpaid rent; and b) for cause under section 55 of the *Residential Tenancy Act*?

Is the Landlord entitled to a Monetary Order for unpaid rent under section 67 of the *Residential Tenancy Act*?

Is the Tenant entitled to an Order to cancel a notice to end tenancy for cause under section 47 of the *Residential Tenancy Act*?

Is the Tenant entitled to an Order to have the Landlord comply with the Act, Regulation, or tenancy agreement, under section 62 of the *Residential Tenancy Act*?

Background and Evidence

The undisputed testimony included the month to month tenancy agreement began on November 1, 2005 and the Tenant did not pay a security or pet deposit. At the onset of the tenancy agreement rent was payable on the first of each month in the amount of \$480.00.

The Landlord argued that the Tenant's rent was increased from \$480.00 per month to \$500.00 per month approximately six months ago and that the Landlord completed a new "intend to rent form" for the Ministry of Housing and Social Development. The Landlord confirmed that past rent has been paid in cash by the Tenant to the Landlord.

The Tenant argued that the Landlord bullied him into paying a higher monthly rent by yelling at the Tenant a while back that his rent was being increased.

The Landlord testified that there have been some on-going issues with the Tenant which is why a 1 Month Notice to End Tenancy for Cause was issued and posted to the Tenant's door on February 15, 2010. The Landlord argued that a 10 Day Notice to End Tenancy was posted to the Tenant's door on March 2, 2010 when the Tenant failed to pay his March 2010. The Landlord clarified that he listed the amount of \$250.00 on the 10 Day Notice as the amount being unpaid because his understanding was that he could only list the half month's rent because the notice was to be effective March 12, 2010.

The Landlord has amended his application to include a request for a monetary order for April 2010 unpaid rent as the Tenant is still occupying the rental unit and has not paid rent for April.

The Tenant argued that he was unclear on what his rent payment was. The Tenant testified that he has no memory of the Landlord completing a second intent to rent form for the Ministry advising them that his rent would increase and that the Landlord did not provide the Tenant with a written notice of the rent increase. The Tenant argued that he did not know how long he would be staying at the rental unit so he decided not to pay his rent in accordance with his tenancy agreement. The Tenant confirmed he later paid the Landlord his March rent, in accordance with the tenancy agreement, in the amount

of \$480.00 on March 24, 2010, because he was hoping to escape this situation of having to move.

The Landlord argued that the Tenant gave the March 24, 2010, rent payment to his daughter. The Landlord stated that the Tenant's foster son approached the Landlord the next day to talk about increasing the Tenant's rent and allow the foster son to reside at the rental unit. The Landlord testified that he told the Tenant's foster son that he would not be continuing the tenancy and would not allow the foster son to reside at the rental unit.

Analysis

All of the testimony and documentary evidence was carefully considered.

Landlord's Application

Order of Possession for Unpaid Rent- I have reviewed all documentary evidence and accept that the Tenant has been served with the 10 Day Notice to End Tenancy as declared by the Landlord. The notice is deemed to have been received by the Tenant on March 5, 2010, three days after it was posted to the door, and the effective date of the notice is March 15, 2010, pursuant to section 90 of the *Act*. I accept the evidence before me that the Tenant has failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

Based on the foregoing, I find that the Tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice and I hereby approve the Landlord's request for an Order of Possession.

Order of Possession for Cause – Having rendered an Order of Possession in favor of the Landlord above, I find the Landlord's request for an Order of Possession for cause mute.

Monetary Order for Unpaid Rent – The documentary evidence supports that the Tenant's rent is payable on the first of each month in the amount of \$480.00. In the presence of conflicting testimony relating to a previous rent increase I find the Landlord was paid, in full, for March 2010 rent when he received the payment of \$480.00 from the Tenant on March 24, 2010.

In considering that the Order of Possession has been granted with an effective date of two days upon service to the Tenant, I find the Landlord's monetary claim for April 2010 rent to be premature as the Landlord may have an opportunity to mitigate his losses and

re-rent the unit. As per the aforementioned I hereby dismiss the Landlord's monetary claim, with leave to reapply.

Tenant's Application

Cancel a Notice to End Tenancy for Cause - Having rendered an Order of Possession in favor of the Landlord pertaining to unpaid rent, I find the Tenant's request to cancel an Order of Possession for cause mute.

Order Landlord to Comply – Although an Order of Possession has been granted in favor of the Landlord, the Landlord is not precluded from complying with the *Act* and is therefore Order to comply in accordance with section 2 and 5 of the *Residential Tenancy Act*.

Filing Fees As neither party were completely successful with their application; I decline to award either party recovery of their respective filing fee costs.

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 Tenant and may be filed in the Supreme Court and enforced 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*.

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Dated: April 14, 2010.

Dispute Resolution Officer