

## **DECISION**

Dispute Codes      CNR, OPR, MNR, MNSD, FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord applied for an order of possession and a monetary order. The tenant has applied to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the landlords and the male tenant.

At the outset of the hearing it was noted by the landlords that the tenancy began with the female tenant. In August 2009 the male tenant moved in and the landlords and the two tenants entered into a new tenancy agreement for rent in the amount of \$1,305.00 per month.

In February 2010, the landlords were informed the female tenant was moving out and agreed to a new tenancy agreement with the male tenant only for rent in the amount of \$980.00 per month. As a result, I find the matter regarding unpaid rent from February 1, 2010 to the current date is a matter only between the landlords and the male tenant.

I therefore amend the landlord's application to exclude the female tenant. The landlord is at liberty to make a separate application regarding the female tenant's security deposit or any damage she may have caused to the rental unit.

### Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

In addition it must be decided if the tenant is entitled to cancel the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to Section 46 of the *Act*.

### Background and Evidence

The tenancy began in January 2009 when the female tenant moved into the rental unit on a month to month basis for a monthly rent of \$980.00 due on the 1<sup>st</sup> of the month. A security deposit of \$490.00 was paid. The male tenant moved into the rental unit in

August 2009 at which time the monthly rent amount was increased by \$325.00 to a total of \$1,305.00.

The landlords have submitted into evidence the following documents:

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated February 24, 2010 with an effective vacancy date of March 5, 2010 due to unpaid rent in the amount of \$655.00 owed for February 2010;
- Documentation confirming service of hearing and evidentiary documents to both tenants;
- Copies of income assistance stubs for partial rent payments for the rental unit; and
- 23 photographs showing condition of the rental unit, after a recent landlord inspection.

The tenant also submitted a copy of the 10 Day Notice to End Tenancy.

The landlords testified that when the female tenant moved out they agreed to reduce the rent to the original \$980.00 per month for the male tenant, effective February 1, 2010. The landlords confirmed that they had received 3 cheques for the male tenant's portion of the rent in the amount of \$325.00 each for a total of \$975.00 that they have not yet cashed.

As such the total amount for rent for the months of February, March and April, 2010 is \$2,940.00. As the landlords have received cheques in the amount of \$975.00 the balance owing by the tenant is \$1,965.00.

The tenant acknowledges the landlord is owed the rent but he was of the understanding that the female tenant had paid the balance of \$655.00 in February, 2010. Neither party has been able to contact the female tenant.

### Analysis

Despite the fact the parties had entered into verbal only tenancy agreements contrary to Section 13 (1) of the Act that requires tenancy agreements to be in writing, both parties agree to the details of the changes in the tenancy agreement including who is occupying the property and how much rent was changed as a result of these tenant changes.

As the tenant acknowledges the rent is owed to the landlords and that it remains unpaid, I find the 10 Day Notice to End Tenancy for Unpaid Rent issued on February 24, 2010 to be in full force and effect. I dismiss the tenant's application to cancel the notice to end tenancy.

As per the landlord's testimony the security deposit was paid by the female tenant at the start of her tenancy and is therefore not available for this tenant to set off the debt for

the unpaid rent, as such I dismiss the landlord's application to retain the security deposit.

The landlords have agreed to a possession date of April 26, 2010.

### Conclusion

I find that the landlord is entitled to an Order of Possession effective **April 26, 2010**. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$2,015.00** comprised of \$1,965.00 rent owed and the \$50.00 fee paid by the landlord for this application.

This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) 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*.

Dated: April 20, 2010.

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Dispute Resolution Officer