

DECISION

Dispute Codes

OPR OPC MNR MNSD MNDC FF
CNR CNC DRI MNDC OLC RP O FF

Introduction

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

The Landlord filed seeking an Order of Possession for Cause, an Order of Possession for unpaid rent, a Monetary Order for unpaid rent, to keep all or part of the pet and/or security deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee for this application.

The Tenants filed seeking an Order to cancel the notice to end tenancy for unpaid rent, to cancel the notice to end tenancy for cause, for a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to obtain an Order to have the Landlord comply with the Act, to have the Landlord make repairs to the unit, site or property, for other reasons, 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 Tenants confirmed receipt of the hearing package and evidence sent by the Landlord.

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The Landlord, Female Landlord, and both Tenants appeared, 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 an Order of Possession for unpaid rent and/or cause under section 55 of the *Residential Tenancy Act*?

Is the Landlord entitled to a Monetary Order a) for unpaid rent, and b) to keep all or part of the pet and/or security deposit, and c) for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to sections 38 and 67 of the *Residential Tenancy Act*?

Are the Tenants entitled to an Order to dispute a rent increase under section 42 of the *Residential Tenancy Act*?

Are the Tenants entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67 of the *Residential Tenancy Act*?

Are the Tenants entitled to an Order to have the Landlord comply with the Act, regulation or tenancy agreement, and to make repairs to the unit, site or property, pursuant to sections 62 and 32 of the *Residential Tenancy Act*?

Background and Evidence

The undisputed facts were the parties entered into a verbal tenancy agreement for two adults and two children to occupy the two bedroom rental unit effective August 15, 2009. Rent was payable on the first of each month in the amount of \$950.00, which included utilities and a security deposit of \$475.00 was paid by the Tenants on August 13, 2009.

The Landlord testified that he noticed the male Tenant's mother in-law was residing at the rental unit towards the end of August 2009 and that he confirmed on September 5, 2009 that the mother in-law was in fact residing in the rental unit with the Tenants and their two children. The Landlord argued that he met with the male Tenant to advise him that if his mother in-law was going to be residing in the rental unit indefinitely then rent would be increased by \$350.00 per month for the additional occupant and to compensate for the additional utility costs.

The Landlord stated that the Tenants paid \$950.00 plus an additional \$250.00 on September 22, 2009, which the Landlord accepts as payment in full for September 2009. Only \$950.00 was paid for October 2009 with no additional amount, even though the Landlord had a meeting with both Tenants at which time they entered into a verbal agreement that the monthly rent would be \$1,250.00 per month, effective October 1, 2009, to accommodate for the additional occupant. The increased amount of \$1,250.00 was paid for November 2009, December 2009, January 2010, and February 2010. An additional \$160.00 was paid in February 2010 to be put towards the short payment for

October 2010, leaving a balance owing for October 2009 of \$140.00. The Landlord referred to his documentary evidence to support that he received a message from the Tenants explaining that the remaining \$140.00 short payment for October 2009 would be forth coming. The Landlord testified that only \$1,150.00 was paid for March 2010, short \$100.00, and nothing has been received towards the payment of April 2010 rent.

The female Landlord testified the 1 Month Notice to End Tenancy for repeated late payment of rent was posted to the Tenants' door on March 1, 2010, when they short paid March 2010 rent by \$100.00 and failed to pay the balance due from October 2009. The female Landlord argued that the 10 Day Notice to End Tenancy for unpaid rent was posted to the Tenants' door on March 2, 2010.

The Landlord referred to his documentary evidence of a copy of the Tenants' September 2009 rent payment that was returned NSF as additional support that their rent has been paid late in September 2009, October 2009, and again in March 2010.

The male Tenant testified and confirmed the Landlord's testimony that they had a verbal agreement to increase the rent by \$300.00. The male Tenant argued that he found out later that this was an illegal rent increase because the Landlord did not provide the Tenants with three months written notice of the increase. The Tenants are seeking a monetary order of \$2,050.00 to recover the cost of the additional payments made for the increased rent.

The male Tenant confirmed the payments made as testified to by the Landlord except for March 2010 rent where the Tenant argues they paid the full \$1,250.00 and did not short pay by \$100.00. The male Tenant confirmed that they did not pay anything towards April 2010 rent and argued that they were under the impression that the amounts paid for the additional rent increase could be used towards their rent payments.

Both Tenants provided testimony relating to items requiring repair in the rental unit specifically to do with the toilet running and the fridge not working properly. The Tenants confirmed that they reported the problems to the Landlord during verbal conversations and could not provide evidence in support of the dates or frequency of their requests for repairs. The female Tenant argued that she finally entered into a verbal agreement with the Landlord in February 2010, that she would replace the fridge with one that the Tenant's friend could provide for them.

The Landlord is seeking an Order of Possession for as soon as possible and is not interested in re-establishing this tenancy.

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

Tenants' Application

The evidence supports the parties entered into a verbal agreement to amend the standard terms of the tenancy agreement to increase the rent based on an additional occupant residing in the rental unit, in accordance with Section 13 (2) of the Act.

Section 40 of the Act provides that a "rent increase" does not include an increase in rent that is related to a term of the tenancy agreement pertaining to additional rent required for additional occupants, and therefore cannot be disputed under sections 41, 42, and 43 of the Act. Based on the aforementioned I find the Tenants have failed to prove the test for damage or loss, as listed above and I hereby dismiss the Tenants' claim to dispute an additional rent increase and their monetary claim of \$2,050.00 for the return of additional rent paid as a result of an illegal rent increase.

In the absence of evidence to support the Tenants provided the Landlord with numerous requests to repair the toilet and fridge, that the Landlord ignored their requests; and in the presence of the Landlord's requests for Orders of Possession, I dismiss the Tenants' requests to have the Landlord ordered to comply with the Act and ordered to repair the rental unit.

The evidence supports the Tenants have paid their rent late on a minimum of three occasions and that no rent was paid for April 2010; therefore I find the Tenants have failed to prove the merits of their claim to request the 1 Month Notice for Cause and the 10 Day Notice for unpaid rent be cancelled and I dismiss their application.

The Tenants have not been successful with their claim, therefore I decline to award recovery of their filing fee.

Landlord's Application

Order of Possession Upon review of the 1 Month Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of the Act and I find that it was served upon the Tenants in a manner that complies with section 47 of the Act. Upon consideration of all the evidence presented to me, I find the Landlord had valid reasons for issuing the Notice.

Section 55 of the Act provides that an Order of Possession must be provided to a Landlord if a Tenant's request to dispute a Notice to End Tenancy is dismissed and the Landlord makes an oral request for an Order of Possession during the scheduled hearing. Therefore I approve the Landlord's request for an Order of Possession. Although the Landlord requested an Order effective immediately, in consideration of the Tenants' assumption that they would have overpaid their rent had I approved their claim to dispute an increase, I am approving the Order effective April 30, 2010, in accordance with Section 62 of the Act.

Having issued an Order of Possession in relation to the 1 Month Notice to End Tenancy, there is no need to review the issuance of the 10 Day Notice to end Tenancy for unpaid rent.

Monetary Order The Landlord claims for unpaid rent of \$1,490.00 which is comprised of \$140.00 for October 2009, \$100.00 for March 2010, and \$1,250.00 for April 2010 pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due. I find that the Tenants have failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. The evidence supports the amounts claimed by the Landlord therefore I find the Landlord has proven the test for damage or loss, as listed above, and I hereby approve his claim of \$1,490.00 of unpaid rent.

Filing Fee \$50.00. The Landlord has been successful with his application therefore I award him recovery of the filing fee from the Tenants.

Claim to keep all or part of security deposit. I find that the Landlord's claim meets the criteria under section 72(2)(b) of the *Act* and order this monetary claim to be offset against the Tenants' security deposit of \$475.00 plus interest of \$0.00 for a total of \$475.00.

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

Unpaid Rent (October 2009 \$140.00, March 2010 \$100.00, April 2010 \$1,250.00)	\$1,490.00
Recovery of the filing fee	<u>50.00</u>
Subtotal (Monetary Order in favor of the Landlord)	\$1,540.00
Less Security Deposit of \$475.00 plus interest of \$0.00	-475.00
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$1,065.00

Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **April 30, 2010 at 1:00 p.m., after service on the Tenants.** This order must be served on the Tenants 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 **\$1,065.00.** The order must be served on the Tenants 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: April 20, 2010.

Dispute Resolution Officer