

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, MNDC, ERP, FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord has applied for an order of possession and a monetary order. The tenant has applied for compensation for damage or loss and to make emergency repairs.

The hearing was conducted via teleconference and was attending by the landlord and his agent and the tenant and a witness.

### 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 tenants 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 whether the tenant is entitled to order for emergency repairs; to a monetary order for compensation for loss of quiet enjoyment, pursuant to sections 28, 33, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlord has submitted the following documents into evidence:

- A copy of a tenancy agreement signed by the parties on January 23, 2009 for a month to month tenancy beginning on February 1, 2009 with a monthly rent of \$1,200.00 due on the 31<sup>st</sup> of the month, a security deposit of \$600.00 was paid on January 31, 2009;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated April 1, 2010 with an effective vacancy date of April 11, 2010 for \$1,200.00 in unpaid rent and confirmation of service of the notice on April 1, 2010 at 8:23 p.m. The landlord provided written confirmation that this service was witnessed by a third party;
- Copies of tenancy agreements for current and previous tenants for the unit directly above this tenant's rental unit; and
- A copy of a letter dated September 26, 2001 from the city regarding completion of work under a specific building permit.

The tenant submitted the following documentary evidence:

- Several emails from the tenant to the landlord complaining about the noise from the upstairs rental unit dating from July 2009 to March 2010;
- A note from the tenant's physician regarding her medical condition;

- A copy of a Mutual Agreement to End a Tenancy dated April 20, 2010 with an effective vacancy date of May 15, 2010;
- A signed agreement between the tenant and the landlord dated April 20, 2010 stating the landlord agrees to provide the tenant compensation in the form of one month's rent and cash or a money order for an additional \$600.00 to be paid immediately;
- A letter dated May 6, 2010 stating that the landlord had not yet provided the \$600.00;
- A copy of a letter dated April 12, 2010 to this hearing from the tenant regarding the tenant's stay with a friend when the tenant's upstairs had a baby staying with them in November 2009; and
- A summary of events.

The tenant and landlord both agree that the tenancy should end and that the tenant has not paid rent for April or May 2010. The parties have had a longstanding dispute over noise issues on the residential property, particularly in regards to the tenants above this tenant. The landlord confirmed the tenant has been complaining about noise since the beginning of her tenancy.

The tenant stated that when the landlord came to collect rent on April 1, 2010 they had discussion about her inability to pay rent because her roommate had moved out, because of the noise from the upstairs tenants. Because her roommate moved out she could not afford the rent.

The tenant testified that the landlord agreed to let her pay  $\frac{1}{2}$  of the normal rent in the amount of \$600.00. She also noted she agreed to move out April 30, 2010 but that the landlord returned later that day with a 10 Day Notice to End Tenancy for Unpaid Rent.

Subsequently the parties entered into two agreements on April 20, 2010. The first was a mutual end to the tenancy to be effective on May 15, 2010. The second was for the landlord to compensate the tenant for loss of quiet enjoyment by forgoing rent for the month of April, 2010 and the landlord to provide the tenant with \$600.00 immediately.

Both parties acknowledge the landlord failed to provide the tenant with the \$600.00 and the tenant failed to move out of the rental unit on May 15, 2010. The landlord stated in the hearing that he withdraws his approval of the agreement.

### Analysis

As to the tenant's application for an order for emergency repairs, the request was for soundproofing the residential property which does not fall under Section 33 of the *Act* as an emergency repair I dismiss this portion of the tenant's application.

After the landlord issued the Notice to End Tenancy for Unpaid Rent on April 1, 2010 he entered into two agreements with the tenant on April 20, 2010 that resulted in the landlord reinstating the tenancy. Having said this, the parties came to a mutual agreement to end the

tenancy in accordance with Section 44 (1)(c). As per the mutual agreement, I find the effective date of the end of the tenancy to be May 15, 2010.

The second agreement that was entered into was one for compensation for the tenant's loss of quiet enjoyment with a total value of \$1,800.00 consisting of the forgoing of one month's rent (\$1,200.00) and \$600.00 cash or money order to the tenant.

A party to a signed contract cannot unilaterally withdraw his agreement, particularly when that agreement may have contributed to the other party's agreement in relation to another contract, such as in this case the Mutual Agreement to End the Tenancy.

As such, I find the landlord must compensate the tenant for loss of quiet enjoyment as per the agreement entered into on April 20, 2010. However, I also find that the tenant still owes rent for the portion of May that she had agreed to stay for or ½ month's rent in the amount of \$600.00.

### Conclusion

I 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.

I find that the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$50.00** comprised of \$1,800.00 rent owed for April 2010 and ½ of May 2010 less the \$1,800.00 in compensation owed to the tenant, as per their agreement, plus the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct this amount from the security deposit and interest held in the amount of \$600.00 in satisfaction of this claim, with the balance of the security deposit to remain held in trust to be resolved in accordance with Section 38 of the *Act*, at the end of the tenancy.

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: May 17, 2010.

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Dispute Resolution Officer