

## **DECISION**

### **Dispute Codes**

For the tenant – MT, CNR, O

For the landlord – OPR, MNR, FF

### **Introduction**

This decision deals with two applications for dispute resolution, one brought by the tenants and one brought by the landlord. Both files were heard together. The tenants have requested more time to file their application, request that the landlords 10 Day Notice to End Tenancy is cancelled, and other issues concerning an Order for the landlord to stop turning off the power. The landlord seeks an Order of Possession for unpaid rent, a Monetary Order to recover unpaid rent and to recover the filing fee paid for her application.

I find that both parties were properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

### **Issues(s) to be Decided**

- Are the tenants entitled to more time to cancel the Notice to End Tenancy?
- Are the tenants entitled to cancel the Notice to End Tenancy?
- Is the landlord entitled to an Order of Possession?
- Is the landlord entitled to recover unpaid rent?

### **Background and Evidence**

This tenancy started on September 30, 2007 when the tenants first rented the pad for their trailer from the landlord. The tenants moved into their trailer on May 01, 2009. Pad rent was \$350.00 per month and was due on the first of each month. No written tenancy agreement is in place.

#### The landlords' application

The landlord testifies that the 10 Day Notice was served to the tenants as they owed \$760.00 in unpaid rent. These rental arrears in total were \$2,530.00 which accumulated prior to May 01, 2009 before the tenants actually moved into the trailer. The tenants had an agreement to pay an additional \$150.00 each month on top of their normal rent until the arrears were paid; however, the tenants stopped paying these arrears in March 2010 and continued to pay the rent of \$350.00 only. The landlord testifies that since filing her application the tenants have not paid their pad rent of \$350.00 for May or June, 2010. The landlord states she did receive a rent cheque from Social Services for June, 2010 but returned it to Social Services and explained to them that the tenants still owed rent for May, 2010 and the rent cheque she had been sent was for June, 2010. The landlord seeks rental arrears of \$760.00 plus unpaid rent for May, 2010 of \$350.00 and seeks to amend her application to include unpaid rent for June, 2010 of \$350.00 to a total amount of \$1,460.00.

The tenant testifies that they had a separate agreement with the landlord to pay the rent arrears. The tenant claims that they understood the rental from September 30, 2007 to May 01, 2009 was for storage charges for the trailer as they did not live in the trailer at that time and only moved in on May 01, 2009. The tenant states that as this was storage the Residential Tenancy Branch does not have jurisdiction in this matter. The tenant does not dispute that she owes 760.00 to the landlord for rent for this time but claims it was storage and not pad rent.

The tenant claims that she paid the landlord rent for May, 2010 of \$350.00 but was not given a receipt by the landlord. The tenant also claims the landlord told them she would return this amount to the tenants when they vacated the Pad. The tenant claims that Welfare paid their rent for June, 2010 and it is the landlords' fault that she gave this cheque back to Welfare and she should not be held responsible for it.

The landlord testifies that every time the tenants paid rent they were given a receipt for it. The tenant has provided copies of the receipts she claims she has. The landlord testifies that the male tenant signed a rental card at the start of the tenancy in September, 2007. He agreed to occupy one of the rental pads at a monthly rent of \$350.00. This pad had all the facilities required if the tenants choose to hook up their trailer. If the tenants wanted storage only their trailer would have been put in a different section of the park with no facilities and their rent would have been \$150.00 per month. The landlord states the tenants told her they would have to move their trailer out of the park so the landlord claims she told them they could move the trailer to a storage lot at a reduced cost of \$80.00 per month. The tenants agreed and the trailer was moved in December, 2008 prior to them moving in and was moved back again when they wanted to move into the trailer in May, 2009

The landlord seeks an Order of Possession to take effect as soon as possible due to the unpaid rent.

#### The tenant's application

The female tenant attending states they were served with a 10 Day Notice to End Tenancy on April 22, 2010 and the Notice was posted to her door. The tenant states she was unable to file her application to cancel the Notice within five days as she was taking her husband back and forward to hospital. The tenant filed her application on May 03, 2010. The tenant has requested more time to file her application to cancel the 10 Day Notice to End Tenancy. The tenant was given the opportunity to provide evidence of these hospital trips.

The tenant testifies that the landlord cut the cable off to their trailer on May 02, 2010 despite cable services being included in the rent. The tenant claims this was off for approximately two weeks. The tenant claims they then got their own satellite service fitted however the landlord then cut off the power to the trailer so they could not hook the satellite up. The tenants claim the landlord also cut off her internet service which she had used since the start of her tenancy. The tenant states she now pays \$150.00 per month for the internet and television service and seeks a rent reduction to reflect this loss of service.

The tenant testifies that the landlord cut off their power on November 09, 2009 for two days and again on February 01, 02 and 03, 2010. The outside temperature was below freezing and this

froze their water. They had no power, lights or heat during this time. The tenant claims the power was cut off again on May 04 and on May 13, 2010 and the landlord also cut off their water on May 03, 2010 for three days.

The tenant claims the landlord placed a locking device on their trailer at the start of the tenancy and would not remove it so they could move their trailer elsewhere. When they asked the landlord to remove it she told them she would not take it off until their debt was repaid.

The tenant questions the landlord as to why she did not put their trailer in a storage lot from September 30, 2007 until May 01, 2009 at a cheaper rent when she knew they were not living in it.

The landlord testifies that the tenants' husband was aware he was renting a pad and not storage for the trailer. The landlord testifies that she did cut off the power as they had problems with a water pipe leaking under the tenants' trailer. The power had to be shut off to make the repairs. The landlord claims the tenants had two power cables into their trailer and only one was shut off so they still had use of the other power line. The landlord admits she did turn off the power again on February 01, 2010 as the tenants had caused problems it was a way to get the tenants attention and make them talk to the landlord. The landlord claims the power was only off for five hours

The landlord testifies that cable and internet services are not part of the rental for the trailers but only for the rooms rented. The landlord admits the tenants did have use of these services during their tenancy. The landlord admits she did disconnect these services because the tenants caused her problems.

The landlord testifies that the locking device is put on all trailers which are not occupied as a security measure to prevent trailers being stolen from the park and is a benefit to the tenants.

### Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties; with regards to the landlords application for an Order of possession; It is my decision that the tenants rented a pad from the landlord which had all the facilities required for residential

use for the sum of \$350.00 per month and did not question this with the landlord at the time. The tenants argue that this was just for storage of their trailer however the burden of proof falls on the tenants to show that the agreement in place with the landlord was for storage use only. As there is no tenancy agreement and both Parties contradict the others Parties' testimony the burden of proof falls on the tenants to prove that they had an agreement with the landlord to store their trailer. I find the tenants have not met the burden of proof in this matter. I also find the tenants continued to pay the full pad rent for over a year until the trailer was moved to a storage site and then they did eventually move into their trailer. Consequently, I find I do have jurisdiction in this matter and find the landlord has established her claim for rent arrears of \$760.00.

The landlord also seeks a Monetary Order for unpaid rent for May and June, 2010 to the sum of \$700.00. The tenant argues that she paid rent for May, 2010 and did not receive a receipt from the landlord. Again the burden of proof lies with the tenant in this matter to show that she did pay rent for May, 2010. The tenant has provided a number of rent receipts that show that rent was paid over some months. This shows me that the landlord did provide rent receipts to the tenants and therefore I find on a balance of probability that the tenants did not pay rent for May, 2010 of \$350.00. However, the landlord admits that she did receive a cheque from Welfare for the tenants rent for June, 2010 but she gave this cheque back to Welfare. Consequently, it is not the tenants fault that rent for June was not accepted by the landlord and I find it is the landlords reasonability to sort out this rent payment with the tenants or Welfare again. Therefore, the landlord has established part of her claim for a Monetary Order for unpaid rent to the sum of **\$1,110.00** (\$760.00 and \$350.00) pursuant to section 67 of the *Act*.

As I have found in favor of the landlords claim that rent was in arrears I find she has established her claim for an Order of Possession to take effect two days after service on the tenants pursuant to section 55 of the *Act*.

As the landlord has been successful with her claim I find she is entitled to recover the filing fee from the tenants of **\$50.00** pursuant to section 72 (1) of the *Act*. A Monetary Order has been issued for the amount of **\$1160.00**.

With regards to the tenant's application for more time to file their claim to cancel the Notice to End Tenancy; Section 66 (3) of the *Act* states:

### **Director's orders: changing time limits**

- 66** (3) The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.

As the effective date of the notice was omitted from the 10 Day Notice by the landlord the tenants could have reasonably assumed that as it was a 10 Day Notice the effective date would be 10 days from the date it was received by the tenants. Consequently I find the effective date would be May 05, 2010 as the notice was posted on the tenants' door on April 22, 2010 and is deemed to have been served three days after posting. The tenant filed her application before this effective date therefore I refer both Parties to section 66(1) of the Act which states:

### **Director's orders: changing time limits**

- 66** (1) The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59 (3) *[starting proceedings]* or 81 (4) *[decision on application for review]*.

The female tenant testifies that she had to accompany her husband to hospital during the five days she had to dispute the Notice to End Tenancy. I allowed the tenant time to send me additional evidence of this to determine if it constitutes exceptional circumstances. The tenants have been unable to provide me with any evidence to corroborate their claim that the male tenant was incapacitated to an extent that meant either tenant was unable to file an application to dispute the Notice to end tenancy. Therefore I find the circumstances are not exceptional and consequently the tenant's application to dispute the Notice is dismissed.

With regards to the tenants application to deal with other issues; I find the tenants have not disclosed a monetary amount they are seeking for a loss of facilities such as power, cable, internet and water. During the hearing the tenant discussed an amount of compensation for the

loss of these facilities; however she has provided no evidence to support the actual cost of replacing her cable and internet service. The tenant also seeks compensation during the hearing for loss of power to her trailer. The landlord admits that she did cut off the power on one occasion; however, the tenants have not claimed a monetary award for the loss of power on their application and have provided no corroborating evidence to show how many days their power was discounted for. The tenant's application seeks an Order to prevent the landlord turning off their power again in the future; as the tenancy will end there is no reason for an Order to be given concerning this matter.

### Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,160.00**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days** after service on the tenant. This order must be served on the tenants and may be filed in the Supreme Court and enforced as an order of that Court.

The tenant's application is dismissed in its entirety without leave to reapply.

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: June 24, 2010.

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Dispute Resolution Officer