

## **DECISION**

Dispute Codes      FF, MND, MNDC, OPR, OPC, MNR, CNC, CNR, OLC

### Introduction

Some documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties .

All testimony was taken under affirmation.

### Issues(s) to be Decided

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together.

The tenant's application is a request to have a 1 month Notice to End Tenancy cancelled, a request to have a 10 day Notice to End Tenancy cancelled, and a request for a monetary order for \$500.00.

The landlords application is a request for an Order of Possession based on both the one month Notice to End Tenancy and the 10 day Notice to End Tenancy, and a request for a monetary order for \$2187.50 in outstanding rent and damages.

## **Notices to end tenancy**

### Background and Evidence

The tenant has admitted that she was served with both a 1 month Notice to End Tenancy which she received on April 30, 2010, and a 10 day Notice to End Tenancy for non-payment of rent which she received on May 4, 2010.

I will deal first with the 10 day Notice to End Tenancy as that is the more urgent of the two.

The tenant testified that:

- She is been unable to pay the rent because the Ministry of social services will only pay a maximum of \$395.00 per month and the landlord will not accept that as payment of rent.
- Because the landlord will not accept \$395.00, the ministry will not release any funds since a 10 day Notice to End Tenancy has been issued.
- Therefore the full amount rent for the months of May 2010 in June 2010 is still outstanding as she has been unable to get the rent.
- If the 10 day Notice to End Tenancy is cancelled the ministry will release the \$395.00 per month and therefore she is requesting that the Notice to End Tenancy be cancelled.

The landlord testified that:

- They are not willing to accept \$395.00 per month for rent when the rent is \$795.00 per month.
- They want an Order of Possession for as soon as possible, because the tenant has already lived in the rental unit for two months without paying rent.

### Analysis

There is no valid reason for me to set the 10 day Notice to End Tenancy aside. The tenant has admitted that rent is outstanding, and it is not reasonable to expect the landlord to accept less than half the rent, and allow the tenancy to continue.

I therefore deny the tenants application to have the 10 day Notice to End Tenancy set aside and allow the landlords request for an Order of Possession

Having issued an Order of Possession based on the 10 day Notice to End Tenancy, there is no need for me to deal with the one month Notice to End Tenancy.

### Conclusion

#### Tenants application

The tenants application to have the 10 day Notice to End Tenancy cancelled is dismissed without leave to reapply

#### Landlords application

I have issued an Order of Possession to the landlords for two days after service on the tenant.

### **Monetary claims**

#### Background and Evidence

The tenant testified that:

- The building manager has harassed her throughout the tenancy and has even attempted to enter rental unit with his passkey and therefore she is requesting compensation of \$500.00 for loss of use and enjoyment

The landlord testified that:

- The building manager would never enter a tenant suite without permission and has not attempted to use his passkey on the tenant suite.
- The building manager has not harassed the tenant, and in fact it is the tenant who has been a problem in this building and they have had numerous complaints from other occupants about the tenant and her invited guests.
- The tenant has two months' rent outstanding at this time totalling \$1590.00.
- The tenant has also failed to pay the security deposit of \$397.50.
- The tenant's guests took the furniture from the lobby up to the tenant suite and left a mess in the lobby. As a result the landlords had to recover the furniture from the tenant suite and clean up the lobby.
- The tenant's guests also smashed some plant pots damaging the plants and the plots and as a result the landlords had to have the damage cleaned up and the plants and pots replaced.

The landlords are therefore requesting an order as follows:

Security Deposit	\$397.50
June 2010 rent	\$795.00
Front lobby cleanup	\$50.00
Damage to plants in pots	\$100.00
Filing fee	\$50.00
Total	\$2187.50

### Analysis

#### Tenants claim

The tenant has supplied no evidence to support her claim that the landlord has been harassing her or attempting to enter her suite. It is basically just her word against that

of the landlords. The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met.

I will therefore not be issuing any monetary order in favour of the tenant.

#### Landlords claim

I will not issue an order for the tenant to pay a security deposit, as I have no authority to do so; however the tenant has admitted that there is two months' rent outstanding therefore I allow that portion of the landlords claim totaling \$1590.00.

I deny the landlords claims for cleaning the lobby and for replacing broken plants, because the landlord has not met the burden of proving that the tenant or invited guests caused this damage as it is basically the landlords word against that of the tenants and, as stated before, the burden of proving a claim lies with the applicant and when it is just the applicants word against that of the respondent that burden of proof is not met.

I will allow the landlords claim for the \$50.00 filing fee, because the tenant still owes a substantial amount of money to the landlords.

#### Conclusion

##### tenants application

The tenant's monetary application is dismissed in full without leave to reapply.

##### Landlords application

I have issued an order for the tenant to pay \$1640.00 to the landlords and the remainder of the landlords claim is dismissed 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 28, 2010.

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Dispute Resolution Officer