

## **DECISION**

Dispute Codes      OPR MNR MNDC FF  
                             CNR RP SS FF

### **Introduction**

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

The Landlord filed seeking an Order of Possession for unpaid rent, a Monetary Order for unpaid utilities, 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 from the Tenants.

The Tenant filed seeking an Order for permission for substitute service, an Order to cancel a notice of unpaid rent, an Order to have the Landlord make repairs, and to recover the cost of the filing fee from the Landlord.

Service of the Landlord's hearing documents was done in accordance with section 89 of the *Act*, served personally by the Landlord to the male Tenant in the presence of a witness on June 14, 2010, at 1:00 p.m.

The Landlord appeared, gave affirmed testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form.

No one attended the teleconference hearing on behalf of the Tenants despite the Tenants filing their own application for dispute resolution which was scheduled to be heard at the same hearing and despite the male Tenant being served notice of the Landlord's application in accordance with the Act.

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

Has the Landlord proven entitlement to Orders under sections 55, 67, and 72 of the *Residential Tenancy Act*?

Have the Tenants proven entitlement to Orders under sections 71, 46, 32, and 72 of the *Residential Tenancy Act*?

## Background and Evidence

The Landlord testified that the Tenants are co-tenants as listed on the tenancy agreement and they both signed the agreement. The initial tenancy agreement was for rent payable on the last day of every month in the amount of \$800.00 but that after several disagreements with the Tenants the Landlord agreed to lower the rent to \$795.00 per month. The Tenants paid a security deposit of \$400.00 and a pet deposit of \$100.00 on April 24, 2009. The Tenants were required to pay \$40.00 per person as per the tenancy agreement however later in the tenancy, after the disagreement between the parties; they came to a verbal agreement that the Tenants would pay \$30.00 per person each month for utilities.

The Landlord stated that from the onset of the tenancy agreement \$400.00 was paid directly to him each month by income assistance and was received on behalf of the male Tenant. The Landlord argued that he has always had difficulty collecting the remaining \$400.00 per month and the Tenants have failed to pay utilities right from the beginning of the tenancy agreement.

The Landlord confirmed serving the 10 Day Notice to End Tenancy, as provided in the Tenants' evidence, in person to the female Tenant on May 14, 2010 which lists \$480.00 as outstanding rent that was payable on May 1, 2010, \$70.00 in unpaid utilities, plus \$300.00 in 12 late payment fees at \$25.00 per month as provided in the tenancy agreement. The Landlord argued that there was \$800.00 balance due for rent plus the cost of utilities for June 1, 2010 and July 1, 2010 (\$400.00 each month) as the only payment he received was from income assistance.

While reviewing the documentary evidence the Landlord stated the male Tenant has four names and that he uses any one of his three given names with his surname. The Landlord argued that he has documentation from income assistance that has all of the male Tenant's names listed on it along with a copy of the tenancy agreement which he agreed to fax to me after the hearing. I explained to the Landlord that I would not accept

any other documents and would only consider the tenancy agreement and the income assistance document in my decision.

The Landlord confirmed he is seeking an Order of Possession, a Monetary Order for unpaid rent, unpaid utilities, late payment fees, and to recover the cost of the filing fee.

### Analysis

All of the testimony and documentary evidence was carefully considered.

Section 88(1) of the *Residential Tenancy Act* and Section 3.1 of the *Residential Tenancy Rules of Procedures* determines the method of service for documents. The Landlord has applied for a monetary Order which requires that the Landlord serve **each** respondent Tenant as set out under *Residential Tenancy Rules of Procedures*. In this case only one of the two Tenants has been personally served with the Notice of Dispute Resolution Proceeding document. Therefore, I find that the request for a Monetary Order against both Tenants must be amended to include only the male Tenant who has been properly served with Notice of this Proceeding. As the female Tenant has not been properly served the Application for Dispute Resolution as required, the monetary claim against the female Tenant is dismissed without leave to reapply.

A fax was received at the *Residential Tenancy Branch* from the Landlord on July 7, 2010, at 11:39 am which consisted of six pages of the copy of the tenancy agreement, a two page addendum to the tenancy agreement, and a payment ledger. A second fax was received from the Landlord on July 7, 2010, at 2:27 p.m. and consisted of one page of a copy of a payment receipt from income assistance displaying the male Tenant's name. I previously instructed the Landlord to fax a copy of the tenancy agreement and income assistance receipt and no other documents, therefore I will not be considering the hand written payment ledger that was faxed to me. I will however consider the addendum to the tenancy agreement, as this forms part of the original agreement and was signed on the same date. I have considered the documents in accordance with #

11.5 of the *Residential Tenancy Branch Rules of Procedure* and I have attached a copy of the tenancy agreement, addendum, and income assistance documents to this decision in order to uphold the principals of natural justice.

Upon review of the tenancy agreement I find the Tenants are co-tenants and are jointly and severally liable for any debts or damages relating to the tenancy, in accordance with #13 of the *Residential Tenancy Policy Guideline*.

Given the evidence before me, in the absence of any testimony from the Tenants who did not appear despite filing their own application and being properly served with notice of the Landlord's application and this proceeding, I accept the version of events as discussed by the Landlord and corroborated by the documentary evidence.

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

## **Landlord's Application**

The evidence supports that as of May 14, 2010, when the 10 Day Notice was issued there was \$480.00 outstanding for rent and \$70.00 outstanding in unpaid utilities. Income assistance paid \$400.00 towards June 2010 and July 2010 rent however the Tenants have failed to pay the balance owing of \$400.00 rent for each month and failed to pay the utilities.

**Order of Possession** - I find that the Landlord has met the requirements for the 10 day notice to end tenancy pursuant to section 46(1) of the *Act*, that the Tenants failed to pay the rent, in full, within 5 days after receiving this notice, and that the Tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit to which the notice relates pursuant to section 46(5) of the *Act*. Based on the aforementioned I hereby approve the Landlord's request for an Order of Possession.

**Claim for unpaid rent** - The Landlord claims for unpaid rent 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 in the amount of \$800.00 is due monthly on the thirty first of each month plus \$40.00 per person for utilities.

In the case of verbal agreements, I find that where verbal terms are clear and both the Landlord and Tenants agree on the interpretation, there is no reason why such terms cannot be enforced. However when one party is absent or the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes as they arise. That being said, in the absence of the Tenants, my decision is based on the documentary evidence before me. Therefore I hereby award the Landlord a monetary order in the amount of \$1,585.00 which is comprised of:

- Rent - \$480.00 due May 1, 2010 + \$400.00 due June 1, 2010 + \$400.00 due July 1, 2010; and
- Utilities - \$70.00 due May 1, 2010 + \$80.00 due June 1, 2010 + \$80.00 due July 1, 2010; and
- Late payment fees of \$75.00 comprised of \$25.00 per month for May 1, 2010, June 1, 2010, and July 1, 2010. Late payment fees are provided in the addendum to the tenancy agreement and are applied in accordance with section 7 of the Regulations.

With respect to amounts claimed by the Landlord for amounts outstanding prior to May 1, 2010, I find that the Landlord did not provide sufficient evidence to prove these amounts were still outstanding and that the Landlord did what was reasonable to mitigate the prior loss; therefore I dismiss the Landlord's claim for amounts due prior to May 1, 2010.

**Filing Fee \$50.00-** I find that the Landlord has succeeded with his application and I award recovery of the filing fee.

Landlord's Monetary Claim - I find that the Landlord is entitled to a monetary claim and this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security and pet deposits as follows:

Unpaid rent (May, June, July 2010)	\$1,280.00
Unpaid utilities (\$70.00 + 80.00 + 80.00)	230.00
Late payment fees 3 x \$25.00 (May, June, July)	75.00
Filing fee	<u>50.00</u>
<b>Subtotal (Monetary Order in favor of the Landlord)</b>	<b>\$1,635.00</b>
Less Security Deposit of \$400.00 + Pet Deposit of \$100.00 + Interest of \$0.00	-500.00
<b>Balance Due to the Landlord</b>	<b>\$1,135.00</b>

## Tenant's Application

Section 61 of the *Residential Tenancy Act* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the Director must determine if the hearing is to be oral or in writing. In this case, the hearing was scheduled for an oral teleconference hearing. In the absence of the applicant Tenants, the telephone line remained open while the phone system was monitored for ten minutes and no one on behalf of the applicant Tenants called into the hearing during this time. Based on the aforementioned I find that the Tenants have failed to present the merits of their application and the application was dismissed.

### Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenants**. This order must be served on the Respondent 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 against the male Tenant. A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$1,135.00**. The order must be served on the respondent male Tenant 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: July 07, 2010.

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Dispute Resolution Officer