

## **DECISION**

### **Dispute Codes**

OPR, MNR, FF

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the landlord for a Monetary Order to recover unpaid rent, and a Monetary Order to recover the filing fee. At the outset of the hearing the landlord stated the tenants have abandoned the rental unit and therefore she withdraws her application for an Order of Possession.

Service of the hearing documents, by the landlord to the tenants, was done in accordance with s. 89 of the *Act*, sent via registered mail on May 29, 2010. Mail receipt numbers were provided in the landlord's documentary evidence. The tenants are deemed to be served the hearing documents five days after service pursuant to section 90(a) of the *Act*

The landlord appeared, gave affirmed testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form. There was no appearance for the tenants, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*.

All of the testimony and documentary evidence was carefully considered. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

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

- Is the landlord entitled to a Monetary Order to recover the unpaid rent?

### **Background and Evidence**

This tenancy started on April 01, 2009. This is a month to month tenancy and rent is \$1,200.00 per month due on the 1<sup>st</sup> of each month. The tenants paid a security deposit of \$600.00 on or about April 01, 2009.

The landlord testifies that she had an agreement with the tenants in the summer of 2009 that they could rebuild the deck of the rental unit during the summer and receive two months of a rent reduction in order to do this of \$600.00 per month. The landlord testifies that the tenants failed to build the deck and in 2010 the strata rules concerning building a deck changed. The landlord was required to use the strata plans, obtain building permits have two strata member look at the area before work commences to look at the irrigation system and gain permission from the strata council before work could commence and the deck must be professional installed in accordance with the strata Bylaws and building codes. The landlord told the tenants that the strata had changed the rules and as they failed to build the deck in 2009 they could no longer do so. The landlord states that she explained to the tenants that they now owed her the reduced rent for these two months of \$1,200.00 as they had breached their agreement to build the deck.

The landlord testifies that the tenants did not pay rent for April, 2010 of \$1,200.00. The tenants failed to pay rent for May, 2010. The landlord served the tenants a 10 Day Notice to End the Tenancy for unpaid rent on May 04, 2010. The amount of outstanding rent at this time was \$3,600.00 which included the rent reduction from 2009. This Notice was given in person to the male tenant and is deemed to have been served on the same day. The tenants had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on May 14, 2010. The tenants did not pay the outstanding rent or dispute the Notice within five days. On May 12, 2010 the tenants paid \$2,400.00. The landlord testifies that she told the tenants she was accepting this payment to recover the rent reduction of \$1,200.00 for 2009 and rent for April, 2010. Rent for May, 2010 remained outstanding.

On May 14 the landlord expected the tenants to vacate the rental unit but as they could not find alternative accommodation the landlord states that she extended the time frame to vacate until May 18, 2010. On May 17, 2010 the male tenant called the landlord and told her that he had now built the deck. The landlord states that she went to the property and asked the tenants if

they had followed the strata rules for building the deck. The landlord claims the tenants did not follow these rules and the deck is badly built. The landlord testifies that the tenants told her that they had now fulfilled their agreement to build the deck and therefore no longer owed any rent money. The landlord said she disagreed with the tenants as the deck would properly have to be torn down. It was shoddy work, built with recycled wood, no permits or permission and was not built to code. The landlord states she told the tenants they still owed her rent for May, 2010.

The tenants did not move from the rental unit on May 18, 2010 but did pay rent for June, 2010. The landlord went to the unit towards the end of June to give the tenants a receipt for use and occupancy only but when she arrived at the unit she found that the tenants had moved out. The tenants have not provided a forwarding address and have not returned the keys to the unit. The landlord states she has advertised the unit for rent in July but it remains unrented. The landlord seeks to recover a loss of rental income for July, 2010 of \$1,200.00 and the landlord has amended her application to include a Monetary Order for rent arrears for July, 2010.

### Analysis

The tenants did not appear at the hearing, despite having been sent a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I find that the landlord did have an agreement with the tenants to build the deck in the summer of 2009. The tenants failed to do so and as the strata rules changed the landlord told the tenants they could no longer build the deck. The tenants went ahead and built the deck without permission of the landlord or the strata council. From the evidence presented at the hearing by the landlord the deck has been built without permits, permission or of a suitable standard that would meet building codes. I also find the tenants built this deck in 2010 without the express permission of the landlord and without following the strata rules therefore the tenants owe rent to the landlord for May, 2010 of **\$1,200.00** pursuant to section 67 of the *Act*.

RTB Policy Guideline #3 – Claims for Rent and Damages for Loss of Rent states that a landlord may elect to end a tenancy and sue the tenant for loss of rent. The damages to which a landlord is entitled is an amount sufficient to compensate the landlord for any loss of rent up to the earliest time the tenant could have legally ended the tenancy. Under section 45 of the *Act*, a tenant of a month-to-month tenancy must give one clear months notice. Consequently, the earliest the tenants could have ended the tenancy would have been June 30, 2010. As a result,

the landlords are entitled to recover loss of rental income for July, 2010 as the tenants overstayed at the rental unit after they were served with a 10 Day Notice to End Tenancy and have abandoned the rental unit without notifying the landlord, returning the keys or paying rent for July, 2010. Therefore, I find the landlord has established her amended claim for unpaid rent for July, 2010 to the sum of \$1,200.00.00 pursuant to section 67 of the *Act*

As the landlord has been successful in this matter, she also entitled to recover the \$50.00 filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

The landlord will receive a monetary order for the balance owing as follows:

Outstanding rent for May and July, 2010	\$2,400.00
Total amount due to the landlord	\$2,450.00

#### Conclusion

I HEREBY FIND in favor of the landlord's amended monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$2,450.00**. 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: July 12, 2010.

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Dispute Resolution Officer