

**Dispute Resolution Services**  
Residential Tenancy Branch  
Ministry of Housing and Social Development

**DECISION**

**Dispute Codes:**

*OPR, MNR, MNDC, MNSD, CNR, FF.*

**Introduction**

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*.

The landlord applied for the following:

- An order of possession pursuant to Section 55;
- A monetary order for rent owed and damages, pursuant to Section 67;
- An order to retain all or part of the security deposit pursuant to Section 38;

The tenant applied for the following:

- An order to cancel the notice to end tenancy for rent, pursuant to Section 46;

Both parties attended the hearing and were given an opportunity to present evidence and make submissions. On the basis of the evidence presented at the hearing, a decision has been reached.

**Issues to be decided: Landlord's Application**

- Is the landlord entitled to an order of possession for unpaid rent?
- Has the Landlord established entitlement to compensation for rent arrears?
- Has the landlord proven that compensation for damages and loss is justified under the Act?
- Is the Landlord entitled to retain the security deposit in partial satisfaction of the

monetary claim?

**Issues to be decided: Tenant's Application**

- Has the tenant proven that the Notice to End Tenancy for Unpaid Rent should be cancelled?

**Background and Evidence**

Based on the testimony of both parties, the background is as follows. The tenancy started in August 2009 with rent of \$2,350.00 and security deposit of \$1,175.00 at the commencement of the tenancy. The tenancy agreement required the tenant to pay 60% of utilities.

Both parties testified that a Ten-Day Notice was issued and served on July 19, 2010 and that the tenant did not satisfy the debt within 5 days that would have served to cancel the Notice. The parties testified that the tenant owed rent of \$2,350.00 for the months of May, June, July, August and September 2010 totalling \$11,750.00 and that the tenant also owed \$525.00 for water, \$913.67 for hydro, \$200.00 to compensate the landlord for extra mortgage interest, \$500.00 for the deductible amount of an insurance claim for damages and bank charges for a cheque that did not clear.

The tenant testified that payment was imminent and they hoped that the landlord would agree to reinstate the tenancy if the tenant paid the arrears in full in the near future.

**Analysis:**

Based on the testimony of the parties, I find that the tenant was served with a Notice to End Tenancy for Unpaid Rent in person. The tenant has not paid the outstanding rent within the 5 days required to cancel the Notice. Based on the above facts I find that the landlord is entitled to an Order of Possession and the tenant's application to cancel the Ten-Day Notice is dismissed.

Section 26 of the Act provides that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a

portion of the rent.

Based on the testimony and evidence of both parties, I find that the parties are in agreement that the tenant now owes the landlord rental arrears of \$2,350.00 each month for May, June, July, August and September 2010, \$525.00 for water utilities, \$913.67 for hydro, \$200.00 additional interest costs, \$500.00 for the deductible amount of an insurance claim for damages and \$25.00 bank charges for the NSF cheque.

I find that the portion of the application from the landlord for anticipated loss of rent for October 2010 in the amount of \$2,350.00 is premature and dismiss this claim with leave for the landlord to reapply should the loss occur.

### **Conclusion**

Pursuant to section 55(2), I hereby issue an Order of Possession in favour of the Landlord effective two days after service on the tenant. The Order may be filed in the Supreme Court for enforcement.

I find that the landlord is entitled to monetary compensation of \$13,963.67 comprised of \$11,750.00 for rent, \$1,438.67 for utilities, \$725.00 for damages and the \$50.00 fee paid by the landlord for this application. I order that the landlord retain the tenant's security deposit of \$1,175.00.00 in partial satisfaction of the claim leaving a balance due of \$12,788.67. I hereby issue a monetary order under section 67 of the *Act* for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The tenant's application is dismissed, without leave to reapply.

Dated: September 2010

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Dispute Resolution Officer