



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

OPR MNR FF
CNL LRE OLC RP

Introduction

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

The Landlord filed seeking an Order of Possession for unpaid rent and a Monetary Order for unpaid rent and to recover the cost of the filing fee from the Tenant for this application.

The Tenant filed seeking an Order to cancel the 2 Month Notice to end tenancy for Landlord's use of the property, to have the Landlord comply with the Act, regulation or tenancy agreement, make repairs to the unit, site, or property, and to suspend conditions on the landlord's right to enter the rental unit.

Service of the hearing documents by the Landlord to the Tenant was done in accordance with section 89 of the *Act*, sent via registered mail October 5, 2010. The Tenant is deemed to be served the hearing package on October 10, 2010, five days after it was sent in accordance with section 90 of the *Act*.

Service of the hearing documents by the Tenant to the Landlord was done in accordance with section 89 of the *Act*, sent via registered mail on September 24, 2010. The Landlord confirmed receipt of the hearing package and evidence sent by the Tenant.

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

Issue(s) to be Decided

- 1)
- 2) Is the Landlord entitled to an Order of Possession under section 55 of the *Residential Tenancy Act*?
- 3) Is the Landlord entitled to a Monetary Order under section 67 of the *Residential Tenancy Act*?
- 4) Is the Tenant entitled to Orders under sections 32, 49, 62, and 70 of the *Residential Tenancy Act*?

Background and Evidence

I heard undisputed testimony that the parties entered into a verbal month to month tenancy agreement effective the beginning of January 2008. Rent was payable on the first of each month in the amount of \$800.00. No security deposit was paid.

The Tenant testified that she vacated the rental unit on October 15, 2010, and requested to withdraw her application in full. She did not inform the Landlord she was vacating and is still in possession of the rental unit keys. She confirmed that she did not pay rent for August, September, and October, 2010.

The Landlord testified that he was not aware that the Tenant vacated the rental unit and now that he has been informed he has regained possession and withdraws his request for an Order of Possession. He is still seeking a Monetary Order for the August and September 2010 rent in the amount of \$1,600.00 and recovery of the \$50.00 filing fee. He confirmed that a 2 Month Notice to End Tenancy for Landlord's use was served to the Tenant on approximately August 14, 2010. The Tenant confirmed receipt of the Notice.

Analysis

The evidence supports the Tenant did not pay rent for August, September, and October, 2010, in violation of section 26 of the residential tenancy Act which states a tenant must pay rent when it is due in accordance with the tenancy agreement. Therefore I award the Landlord a monetary order in the amount of \$1,600.00 (2 x \$800.00) for August and September 2010 rent.

The Landlord issued the Tenant a 2 Month Notice to End the Tenancy for Landlord's Use on August 14, 2010. Section 51(1) of the Act provides that a tenant who receives a notice to end tenancy under section 49 (2 Month Notice To End Tenancy for Landlords Use) of the Act is entitled to receive compensation from the landlord on or before the

effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement. Section 51 (1.1) states that a tenant may withhold the compensation amount from their last month's rent. The Tenant vacated the unit without advising the Landlord therefore preventing the Landlord the opportunity to mitigate his loss of October 2010 rent. Based on the aforementioned I deem the Tenant withheld October 1, 2010 rent payment from the compensation provided under section 51(1) and the October 2010 rent is considered paid in full.

Given the Tenant has abandoned the rental unit the Landlord now has legal possession of the unit.

The Landlord has been successful with his application therefore I award recovery of the filing fee.

Monetary Order – I find that the Landlord is entitled to a monetary claim as follows:

Unpaid Rent for August and September 2010 (2 x \$800.00)	\$1,600.00
Filing fee	50.00
TOTAL AMOUNT DUE TO THE LANDLORD	\$1,650.00

Conclusion

I HEREBY FIND in favor of the Landlord's monetary claim. A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$1,650.00**. The order must be served on the respondent Tenant and is enforceable through the Provincial Court as an order of that Court.

The Tenant withdrew her full application, therefore no further action is required and the file is now closed.

The Tenant is hereby ordered to immediately return the rental unit keys to the Landlord.

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: October 28, 2010.

Dispute Resolution Officer