

## **DECISION**

**Dispute Codes:**                      **Landlord:**    OPR, MNR, MNSD and FF  
   **Tenant:**      CNR, OLC, ERP, RP, PSF, RR and FF

### **Introduction**

These applications were brought by both the landlord and the tenant.

The landlord made application on October 6, 2010 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served on September 3, 2010. The parties disagree on whether it was served in person or by posting. The landlord also sought a Monetary Order for the unpaid rent, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance.

By prior application of September 13, 2010, the tenants sought to have the Notice to End Tenancy set aside, Orders for repairs, emergency repairs, landlord compliance with the legislation or rental agreement, and the provision of services or facilities or services. The tenants also sought a rent reduction and recovery of the filing fee for this proceeding.

While the hearing was under way, the tenants announced that they vacated the rental unit on October 8, 2010 and that they relinquish all interest in the rental unit.

Therefore, the landlord's request for an Order of Possession and the tenants' application would appear to have been rendered moot.

### **Issues to be Decided**

This matter now requires a decision on whether the landlord is entitled to a Monetary Order for unpaid rent and authorization to retain the security deposit in set off against the balance owed.

### **Background and Evidence**

This tenancy began on May 15, 2010. Rent was \$595 per month and the landlord holds a security deposit of \$292.50 paid on or about May 15, 2010.

During the hearing, the landlord gave evidence that the Notice to End Tenancy had been served when the tenants had not paid the full rent for September 2010. The landlord stated that the tenants had offered, and his building manager on his direction, had refused the partial payment within the five-day grace period provided under notice to end tenancy for unpaid rent. That remains unpaid and the tenants paid no rent for October.

The tenants' concerns had arisen from a complaint of lack of heat in the building and the aggressive demeanour of the building manager.

The landlord stated that he had been uncertain if the tenants had moved as they had not returned the keys to the rental unit, a matter the tenants promised to remedy within a day.

The tenants stated that they were reluctant to provide the landlord with their forwarding address but agreed to do so in order that the security deposit might be dealt with in accordance with section 38 of the *Act*.

They gave the address to the landlord on his promise that he would share it with no one else, and the landlord further agreed that he would accept the forwarding address given verbally during the hearing and would waive his right to demand it in writing and signed.

As a matter of note, the Notice to End Tenancy was defective in that it omitted the given name of one tenant and did not name the other.

### **Analysis**

Neither party provided any evidence. For that reason and because of the indeterminable disagreements between them, and because the matter of the security deposit remains unresolved, I find that both application must be dismissed with leave to reapply.

I find that both parties should remain responsible for their own filing fee.

### **Conclusion**

Both applications are dismissed with leave to reapply.

October 19, 2010