



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR MNR MNSD MNDC FF
 MT DRI CNR OLC FF

Introduction

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

The Landlords filed seeking an Order of Possession for unpaid rent, a Monetary Order for unpaid rent, to keep the security deposit, 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 Tenant for this application.

The Tenant filed seeking more time to make her application, for an Order to cancel the notice to end tenancy for unpaid rent, to dispute a rent increase, to order the Landlord to comply with the Act, and to recover of the cost of the filing fee from the Landlord for this application.

Service of the original hearing documents by the Landlords to the Tenant was done in accordance with section 89 of the *Act*, sent via registered mail on October 20, 2010.

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

No one appeared on behalf of the Tenant despite the Tenant being served with notice of the Landlord's application in accordance with the Act and despite having her own application for dispute resolution scheduled for the same hearing date and time.

Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession to the rental unit?
2. Is the Landlord entitled to a Monetary Order for unpaid rent and utilities?
3. Is the Tenant entitled to an Order to Cancel the Notice to End Tenancy?

4. Is the Tenant entitled to more time to make her application to cancel the Notice?
5. Has there been an illegal rent increase imposed?

Background and Evidence

At the onset of the hearing the Landlords referred to packages of evidence that was served to the *Residential Tenancy Branch* and placed in the Tenant's mailbox on Monday November 15, 2010, three days prior to today's hearing. I explained that I could not consider this evidence and that I would accept their testimony pertaining to their claim.

The Landlords testified that they entered into a written tenancy agreement with the Tenant for a month to month tenancy effective October 1, 2009. The agreement was original written showing rent to be \$1250.00 and the security deposit to be \$625.00 however the Tenant advised she could not afford that amount and the parties agreed that rent would be lowered to \$1200.00 per month and the security deposit would also be lowered to \$600.00. Rent was never lowered to \$1150 as indicated on the Tenant's evidence. The \$600.00 security deposit was paid on October 1, 2009.

The Landlords believe the Tenant is still occupying the rental unit and that she has not paid anything towards October or November 2010 rent. Based on their records the Tenant had an accumulated outstanding rent of \$384.00 prior to October 1, 2010 and \$124.00 of unpaid utilities. The Landlords were not able to provide testimony of exactly when the accumulated amounts occurred as the Tenant was always late in paying rent. A 10 Day Notice to End tenancy was issued October 10, 2010 and posted to the Tenant's door that same day. The Landlords are seeking an Order of Possession and a Monetary Order of \$2945.12 which is comprised of \$200.00 rent for September 2010, \$1200.00 rent for October, \$1200.00 rent for November, and \$345.012 in unpaid utilities.

Analysis

The Landlords confirmed that they did not provide the Tenants or the *Residential Tenancy Branch* with copies of their evidence 5 days prior to today's hearing which constitutes a contravention of sections 3.1 and 4.1 of the *Residential Tenancy Branch Rules of Procedure*. Considering evidence that has not been served on the other party in accordance with the Act would create prejudice and constitute a breach of the principles of natural justice. Therefore I find that the Landlords' evidence cannot be considered in my decision pursuant to 11.5 (b) of the *Residential Tenancy Branch Rules of Procedure*. I did however consider the Landlords' testimony and all of the evidence

that was submitted 5 days prior to the hearing which included a copy of the 10 Day Notice and the Tenant's evidence.

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 Tenant, the telephone line remained open while the phone system was monitored for ten minutes and no one on behalf of the Applicant Tenant called into the hearing during this time. Based on the aforementioned I find that the Tenant has failed to present the merits of her application and the application is dismissed, without leave to reapply.

Landlord's Application

I find that in order to justify payment of damages under sections 67 of the *Act*, the Applicant Landlord would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7. It is important to note that in a claim for damage or loss under the *Act*, the party claiming the damage or loss, in this case the Landlord, bears the burden of proof and the evidence furnished by the Applicant Landlord must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the *Act* or agreement
3. Verification of the Actual amount required to compensate for loss or to rectify the damage
4. Proof that the claimant followed section 7(2) of the *Act* by doing whatever is reasonable to minimize the damage or loss

In regards to the Landlords' right to claim damages from the Tenants, Section 7 of the *Act* states that if the landlord or tenant does not comply with this *Act*, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the *Act* grants a Dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

Order of Possession – Section 55 (1) provides that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing, (a) the landlord makes an oral request for an order of possession, and (b) the director dismisses the tenant's application or upholds the landlord's notice. Having dismissed the Tenant's application above, I hereby grant the Landlord's request for an Order of Possession.

Claim for unpaid rent. The Landlords claim for accumulated unpaid rent of \$2,600.00 pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due. I find that the Tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. I find that the Landlord has proven the test for loss as listed above and I hereby approve their claim for unpaid rent.

Claim for unpaid utilities. The Tenant is required to pay the cost of utilities in accordance with the tenancy agreement. In the absence of documentary evidence to support the balance owing for utilities is \$345.12 I must rely on the amount listed on the 10 Day Notice of \$124.00 in unpaid utilities. Therefore I approve the Landlords' claim of \$124.00 in unpaid utilities.

Filing Fee \$50.00- I find that the Landlords have succeeded with their application and are entitled to recover the cost of the filing fee from the Tenant.

Monetary Order – I find that the Landlords are entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit as follows:

Accumulated Unpaid Rent for September \$200.00, October \$1200.00, November \$1200.00, 2010	\$2,600.00
Filing fee	<u>50.00</u>
Subtotal (Monetary Order in favor of the Landlord)	\$2,774.00
Less Security Deposit of \$600.00 plus interest of \$0.00	-600.00
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$2,174.00

Conclusion

Tenants' Application

The Tenant's application is HEREBY DISMISSED, without leave to reapply.

I HEREBY FIND that the Landlords are entitled to an Order of Possession effective **two days after service on the Tenant**. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

A copy of the Landlords' decision will be accompanied by a Monetary Order for **\$2,174.00**. The order must be served on the 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: November 18, 2010.

Dispute Resolution Officer