



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR OPB MNR FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord seeking an Order of Possession for unpaid rent and for cause, a Monetary Order for unpaid rent, to keep the security deposit in partial satisfaction of his claim, and to recover the cost of the filing fee from the Tenant.

The Landlord testified that service of the hearing documents was completed in accordance with section 89 of the *Act*, sent via registered mail on October 25, 2010. The Canada Post tracking number was provided in the Landlord's verbal testimony. The Tenant is deemed to be served the hearing documents on October 30, 2010, the fifth day after they were mailed as per section 90(a) of the *Act*.

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

Issue(s) to be Decided

1. Is the Landlord entitled to possession of the rental unit?
2. Is the Landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The parties entered into a written month to month tenancy agreement effective July 1, 2010. The names of all the tenants and occupants were listed on the tenancy

agreement. Rent is payable on the first of each month in the amount of \$600.00 and the Tenant paid a security deposit of \$300.00 on June 26, 2010.

The Landlord testified that when the Tenant failed to pay rent for October 2010 a 10 Day Notice to End Tenancy was issued on October 10, 2010 and posted to the Tenant's door. A 1 Month Notice to End Tenancy for Cause was issued October 3, 2010 and posted to the Tenant's door after the Landlord attended the rental unit on several occasions and found other people occupying the rental unit instead of those listed on the tenancy agreement.

The Landlord confirmed that he received two separate payments of \$300.00 each with the latest payment on September 15, 2010. No rent has been paid to the Landlord since September 15, 2010 and the Landlord is seeking a monetary order for October and November 2010 rent which totals \$1,200.00. (2 x \$600.00)

Analysis

I find that in order to justify payment of damages or losses under section 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.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the tenant.

Order of Possession – Upon review of the 1 Month Notice to End Tenancy for Cause, I find the Notice to be completed in accordance with the requirements of the Act and I find that it was served upon the Tenant in a manner that complies with the Act.

Section 55 (2)(b) of the Act provides that a landlord may request an order of possession of a rental unit in any of the following circumstance by making an application for dispute resolution if a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired. Based on the aforementioned I hereby approve the Landlord's request for an Order of Possession.

Claim for unpaid rent - The Landlord claims for unpaid rent of \$600.00 for October 2010 and November 2010, 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. Therefore, I approve the Landlords request for a monetary order.

Filing Fee \$50.00- I find that the Landlord has succeeded with their application therefore I award recovery of the filing fee.

Monetary Order – I find that the Landlord is 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 Tenant's security deposit as follows:

Unpaid Rent for October and November 2010 (\$600.00 x 2)	\$1,200.00
Subtotal (Monetary Order in favor of the landlord)	\$1,250.00
Less Security Deposit of \$300.00 plus interest of \$0.00	-300.00
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$950.00

Conclusion

I HEREBY FIND that the Landlord is 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.

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 **\$950.00**. The order must be served on the respondent 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 19, 2010.

Dispute Resolution Officer