Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

<u>Dispute Codes</u>   OPB MNSD MNDC FF

<u>Preliminary Issues</u>

At the onset of the hearing the Landlord advised they had applied for an Order of Possession in error. The Tenant has vacated the unit and the Landlord regained possession at the end of October 2010. They wish to withdraw their request for an Order of Possession.

<u>Introduction</u>

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to keep all or part of the security deposit, and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents, by the Landlord to the Tenant, was done by the Landlord's Agent in person on October 28, 2010, in accordance with section 89 of the *Act.* The Tenant confirmed receipt of the Landlord's evidence and hearing package.

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

<u>Issues(s) to be Decided</u>

1. Did the Tenant provide notice to end the tenancy in accordance with the *Residential Tenancy Act*?
2. Did the Landlord mitigate their loss?

3. Has the Landlord proven entitlement to a monetary order for loss of rent for November 2010?

<u>Background and Evidence</u>

I heard undisputed testimony that the Tenant had a month to month tenancy agreement which was effective May 1, 1998. Rent was payable on the first of each month in the amount of $738.12. The Tenant paid a security deposit of $280.00 on May 1, 1998. The current Landlord took over management of this rental property as of October 1, 2007.

The Landlord testified that on October 5, 2010, they received the Tenant's written notice to end tenancy which was to be effective October 31, 2010. The Landlords have a continual marketing program where they run daily advertisements on numerous websites and advertising forums. They do not advertise specific units; rather they advertise based on their different buildings and show prospective tenants units as they become available. The Landlord confirmed that on November 12, 2010, they entered into a new tenancy agreement for this rental unit effective November 27, 2010. The new tenants will be paying a prorated rental amount of November 2010 of $115.07. The Landlord is seeking a monetary order of $738.12 to cover the Tenant's rent for November 2010 because she provided late notice and requested that this amount be offset against her security deposit.

The Witness for the Tenant testified he is the Tenant's boyfriend and for the past two years he has seen the condition of the rental unit. He stated the carpets were over 12 years old, the grout around the tub surround was cracked, and the linoleum and worn through the top layer.

The Tenant testified and confirmed she served her written notice to end tenancy by placing it in the Landlord's mail slot on October 5, 2010 and that she vacated the rental unit October 28, 2010. She stated she moved on short notice because her apartment

needed upgrading and there was construction going on outside so she could not access her patio or garden.

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.

Section 45 of the Act provides that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement. Therefore, if the Tenant provided the Landlord notice to end tenancy on October 5, 2010, the end date of the tenancy would not be until November 30, 2010. If the Tenant wanted to end the tenancy on October 31, 2010, notice would have had to been received by the Landlord on or before September 30, 2010.

I note that there is no provision under the Act which allows a Tenant to end a tenancy without proper notice because the rental unit requires updating.

Based on the aforementioned I find the Tenant to be responsible for the loss suffered by the Landlord for the month of November 2010. The evidence supports the Landlord entered into a new tenancy agreement prior to the end of November 2010 and will be paid $115.07 for prorated rent. Therefore, the Tenant is only responsible for the balance of rent in the amount of $623.05 ($738.12 – $115.07).

The Landlord has been partially successful with their application, therefore I award recovery of the $50.00 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:

Balance of loss of rent for November 2010	$623.05
Subtotal (Monetary Order in favor of the landlord)	**$673.05**
Less Security Deposit of $280.00 plus interest of $34.60	-314.60
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	**$358.45**

Conclusion

A copy of the Landlord's decision will be accompanied by a Monetary Order for **$358.45**. 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 25, 2010.

Dispute Resolution Officer