



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR OPC MNR MNDC FF
CNR OLC RP

Introduction

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

The Landlord filed seeking Orders of Possession for unpaid rent and cause, a Monetary Order for unpaid utilities, 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.

The Tenant filed seeking an Order to cancel the Notice to end Tenancy for unpaid rent, to Order the Landlord to comply with the Act and make repairs to the rental unit.

Service of the hearing documents by the Landlord to the Tenant was done in accordance with section 89 of the *Act*, served in person at the rental unit on November 6, 2010. The Tenant confirmed receipt of the Landlord's hearing documents.

Service of the hearing documents by the Tenant to the Landlord and Property Owner was done in accordance with section 89 of the *Act*, sent via registered mail. The Canada Post tracking numbers were provided in the Tenant's evidence. The Landlord and Property Owner confirmed receipt of the Tenant's hearing documents.

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

The Landlord and Property Owner confirmed receipt of the Tenant's evidence. The Tenant confirmed receipt of the first package of approximately 29 pages of the Landlord's evidence however he stated he did not receive copies of the latest evidence package from the Landlord which included copies of the latest hydro and natural bills.

Issues(s) to be Decided

1. Has the Tenant paid the full rent for October 2010 and November 2010?
2. Is the 10 Day Notice to End Tenancy valid? If so is the Landlord entitled to an Order of Possession?
3. Is the Landlord entitled to a Monetary Order for unpaid rent and utilities?
4. Is the Landlord required to be Order to comply with the Act and to make repairs to the rental unit?

Background and Evidence

I heard undisputed testimony that the parties entered into a verbal month to month tenancy agreement effective April 1, 2010. Rent is payable on the first of each month in the amount of \$900.00. The Tenant did not pay a security deposit or a pet deposit and the Landlord did not complete a move-in inspection report.

The Landlord testified that the Tenant's October 2010 rent cheque was returned NSF as supported by the copy provided in his evidence. A 10 Day Notice to End Tenancy was issued October 18, 2010 and posted to the Tenant's door on October 19, 2010. The Tenant paid a payment of \$450.00 to the Agent, the Property Owner's father, on October 22, 2010 and signed a document on October 13, 2010 which states all of the maintenance issues have been attended to. The Tenant has not paid the balance due for October rent and has not paid anything towards November 2010 rent. The Landlord is seeking an immediate Order of Possession and a Monetary Order for \$1,667.42 which includes \$450.00 October rent, \$900.00 November rent, \$163.29 natural gas, plus \$154.13 for hydro costs. The Landlord thought he had provided the Tenant copies of these utility bills with his original evidence package.

The Property Owner confirmed that she has not received payment towards the balance owing for October 2010 rent and has not received anything towards November 2010 rent.

The Tenant testified and confirmed he only paid \$450.00 towards October 2010 rent and he has not paid anything towards November 2010 rent. He argued that he had a verbal agreement with the Agent, the Property Owner's father, which he did not have to pay the balance for October 2010 as compensation for having to deal with the maintenance issues. The Tenant argued that he did not pay anything towards November 2010 rent because he is still dealing with problems with his rental unit.

The Agent, Property Owner's father, testified that he did not entered into a verbal agreement with the Tenant to allow his a reduced rent for October 2010 nor did he enter into any other verbal agreement with the Tenant.

Analysis

All of the testimony and documentary evidence was carefully considered.

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 Landlord pursuant to section 7.

Landlord's application

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. I heard disputed testimony that the Tenant allegedly had a verbal agreement with the Agent for a rent reduction for October 2010. There was no such agreement alleged for November 2010 rent. In the case of verbal agreements, I find that where verbal terms are clear and both the Landlord and Tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes as they arise.

I find that the Landlord has met the requirements for the 10 day notice to end tenancy pursuant to section 46(1) of the *Act* that the Tenant failed to pay the rent within 5 days after receiving this Notice and has not paid November 2010 rent. Therefore I approve the Landlord's request for an Order of Possession.

Claim for unpaid rent. The Landlord claims for unpaid rent of \$1,350.00 at \$450.00 for October 2010 plus \$900.00 for November 2010, pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due, whether or not the Landlord complies with this Act. 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 Landlord's claim for unpaid rent.

Claim for unpaid utilities. The Landlord is requesting \$317.42 in unpaid utilities which is comprised of \$163.29 for natural gas and \$154.13 for hydro. Section 46 (6) of the Act provides that a landlord must give the tenant a written demand for payment of the utilities with copies of the bills. In the presence of disputed testimony I find the Landlord's request for a monetary order for the payment of utilities to be premature. Therefore I dismiss the Landlord's request for \$317.42, with leave to reapply.

Filing Fee \$50.00. I find that the Landlord has primarily succeeded with his claim and I hereby award recovery of the filing fee from the Tenant.

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

Unpaid Rent for October 2010	\$450.00
Filing fee	<u>50.00</u>
TOTAL AMOUNT DUE TO THE LANDLORD	\$1,400.00

Tenant's Application

Having approved the Landlord's claim for an Order of Possession I find the Tenant's application to be moot in its entirety. Therefore the application is dismissed.

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 Tenant and may be filed in the Supreme Court and enforced as an order of that Court.

A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$1,400.00**. The order must be served on the respondent Tenant and is enforceable through the Provincial Court as an order of that Court.

I HEREBY DISMISS the Tenant's application, without leave to reapply.

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 29, 2010.

Dispute Resolution Officer