



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR MNR MNSD FF

Introduction

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

Service of the hearing documents to the Tenants by the Landlord was completed on approximately November 5, 2010. The Landlord testified the Tenant's were served in person while the Tenants state they found the hearing documents attached to their door.

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

Issue(s) to be Decided

1. Have the Tenants breached the *Residential Tenancy Act*?
2. If so, has the Landlord proven entitlement to an Order of Possession and a Monetary Order as a result of the Tenants' breach?

Background and Evidence

The Landlord stated he entered into a written month to month tenancy agreement with the Tenants effective May 1, 2009. Rent is payable on the first of each month in the

amount of \$1,000.00 and the Tenants paid a security deposit of \$500.00 on or before April 15, 2009. The Tenants paid October 2010 rent in full however the Landlord has only received \$500.00 cash towards the November 2010 rent. The Landlord stated he believes the cash payment was received sometime around November 11, 2010 and that he also received a written letter from the Tenants requesting their security deposit of \$500.00 be put towards the balance of the rent owed. The Landlord stated that he did not agree to use the security deposit towards rent and he informed the Tenants that the security deposit was to be used for any damages or losses at the end of the tenancy.

I questioned the Landlord if he issued the Tenants a Notice to End Tenancy. He stated that he was not initially instructed by the *Residential Tenancy Branch* to serve the Notice to the Tenants so he believes that he waited until approximately November 22, 2010, to issue the notice. The Landlord was not able to provide definitive testimony as to how the alleged Notice to End Tenancy was served to the Tenants as he replied that he recalled serving one notice in person and that he posted the other to the door. He is seeking an Order of Possession and a Monetary Order for the \$500.00 for November 2010 rent, some compensation towards December's rent as the Tenants have not paid him anything towards December, and payment for the usage of utilities. He stated that he read the meter yesterday and has calculated an amount due.

The Tenants provided testimony and stated they never signed a written tenancy agreement nor did they get a copy of one to sign. They confirmed they paid their October 2010 rent in full and that they paid \$500.00 towards November rent on November 9, 2010. They disputed how they received the Notice of Hearing as noted earlier in this decision and testified that the Landlord has never given them a Notice to End Tenancy. The Tenants advised they were in the process of moving during the hearing. They are of the opinion that their utilities are currently paid up to date.

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 – The notes on the file indicate the Landlord told the staff at the *Residential Tenancy Branch* that he did not issue the Tenants a notice to end tenancy because the Tenants would be gone by the time the Landlord could come into the *Residential Tenancy Branch* for the order of possession application. Based on the aforementioned, in the presence of disputed testimony and in the absence of documentary evidence to support that a 10 Day Notice to End Tenancy was ever issued to the Tenants, I find the Landlord provided insufficient evidence to prove a Notice to End Tenancy was issued to the Tenants in accordance with the *Act*. Therefore I dismiss the Landlord's request for an Order of Possession.

Claim for unpaid rent - The Landlord claims for unpaid rent of \$500.00 for November 2010, pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due. I find that the Tenants have 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 request for a Monetary Order of \$500.00.

I cannot consider the Landlord's request for compensation for part of December 2010 rent as the Landlord has not made application for December's rent nor can the Landlord determine the amount of his loss at this time. The Landlord is required to mitigate his loss and re-rent the unit as soon as possible, in accordance with section 7 of the *Act*.

Claim for unpaid utilities – The Landlord sought a monetary order for utilities cost prior to receiving the invoice from the utility provider. Section 46(6) of the *Act* provides that the landlord may claim for unpaid utilities if they remain unpaid 30 days after the

landlord provided the tenant with a written demand for payment. In this case the utility bills have not been issued and there has been no written demand for payment issued by the Landlord. Therefore I find the Landlord provided insufficient evidence to support his claim for unpaid utilities. I therefore dismiss the Landlord's request for the cost of utilities.

Filing Fee \$50.00- I find that the Landlord has partially succeeded with their application and is entitled to recover the cost of the filing fee from the Tenants.

The Tenants still have possession of the rental unit therefore it is premature to address the disposition of the security deposit. The Landlord is hereby ordered to administer the security deposit in accordance with Section 38 of the *Residential Tenancy Act*.

Conclusion

A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$550.00**. The order must be served on the respondent Tenants 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: December 02, 2010.

Dispute Resolution Officer