



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR MNSD MNR MNDC MND 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, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for damage to the unit, and to recover the cost of the filing fee from the Tenant.

Service of the hearing documents was done in accordance with section 89 of the *Act*, sent via registered mail on November 3, 2010. The Tenant confirmed receipt of the hearing package.

The parties appeared, provided affirmed testimony, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Has the Tenant breached the Act, regulation or tenancy agreement?
2. If so, has the Landlord proven entitlement to an Order of Possession and a Monetary Order as a result of that breach?

Background and Evidence

I heard undisputed testimony that the parties entered into a written fixed term tenancy agreement effective July 1, 2009 and switched to a month to month tenancy after June 30, 2010. Rent is payable on the first of each month in the amount of \$727.56 and a security deposit of \$352.50 was paid on July 2, 2009.

The Landlord testified that when the Tenant failed to pay his October 1, 2010 a 10 Day Notice to End Tenancy was issued and posted to his door on October 5, 2010. A payment of \$727.56 was received from the Tenant on November 2, 2010 for which a receipt was issued for "use and occupancy only" as supported by the copy of the receipt provided in the Landlord's evidence. The Landlord confirmed that no payments have been received from the Tenant for November or December 2010 rent.

The Landlord wishes to proceed with their application for an Order of Possession effective December 10, 2010 and a Monetary Order for November 2010 rent of \$727.56 plus the \$50.00 filing fee.

The Tenant testified that he had established verbal agreements with the Landlord's staff who work at the building to allow him to make his rent payments late. He argued that he has established a pattern of paying his rent late and while he understands the law states he has to pay his rent on the first of each month he has been allowed to pay rent late on a regular basis. He argues that he has established this pattern and that he has had trouble with withdrawing his funds from his home Country. He requested that he be allowed to continue his tenancy and stated that he will be able to pay rent on the first of each month effective January 1, 2011. The Tenant confirmed he did not pay the November 1, 2010 rent because he was waiting to see the outcome of today's hearing.

The Landlord stated that she spoke with the Tenant in early November 2010 and advised that if he paid the November 1, 2010 rent as soon as possible then they could discuss the December rent at today's hearing. She stated the Tenant has made no effort to pay the November rent therefore they are proceeding with their request for an Order of Possession.

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 - 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 in full or apply to dispute this Notice within 5 days after receiving this notice, and that the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit to which the notice relates pursuant to section 46(5) of the *Act*. Therefore I approve the Landlord's request for an Order of Possession effective December 10, 2010.

Claim for unpaid rent – The Tenant argued that he had verbal agreements with the staff to allow him to establish a pattern of paying his rent late. In the case of verbal agreements, I find that where verbal terms are clear, are not an attempt to contract out of the *Residential Tenancy Act*, 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 note that verbal agreements cannot change terms of a written tenancy agreement, therefore I dismiss the Tenant's argument.

The Landlord claims for unpaid rent of \$727.56 for November 1, 2010, pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due in accordance with the tenancy agreement. 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.

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

Monetary Order – I find that the Landlord is entitled to a monetary claim and 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 November 1, 2010	\$727.56
Subtotal (Monetary Order in favor of the landlord)	\$777.56
Less Security Deposit of \$352.50 plus interest of \$0.00	-352.50
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$425.06

Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **December 10, 2010 at 1:00 p.m. 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 **\$425.06**. 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: December 02, 2010.

Dispute Resolution Officer