



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MT, CNC, CNR, OPR, MNR, MNSD, MNDC, RP, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought a monetary order. The tenants sought to cancel two notices to end tenancy; an order to have the landlord make repairs; and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord and both tenants.

At the outset of the hearing the tenants withdrew their application in its entirety.

Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for compensation for damage or loss under the *Residential Tenancy Act* (Act), regulation or tenancy agreement; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act*.

Background and Evidence

The parties signed a tenancy agreement on July 23, 2010 for a 12 month fixed term tenancy for a monthly rent of \$1,000.00 due on the 1st of the month with a security deposit of \$500.00 paid. The tenants vacated the rental unit on November 15, 2010.

The landlord testified that the tenants had delivered the rent to her at her place of employment in a neighbouring town for both September and October but that they did not do so for November.

The tenants testified that they tried several times to contact the landlord to ask to make alternate arrangements to deliver the rent as they were having difficulty arranging to get to the neighbouring community, for example the landlord drives right by the rental unit on her way to work in the neighbouring community.

The landlord testified that she did not have any time to alter her schedule but that she would have agreed to have the tenants deliver a cheque or cash to her home. The tenants testified that they called her several times and she never responded. The

landlord stated she got 30 or 40 calls a day and could not possibly return them all. The landlord confirmed she had no other tenants.

The male tenant also testified that landlord dropped by on one occasion that he asked for her to wait for a minute and he would get her the rent and that she took off before he could give it to her. The landlord testified that she stopped by once and although she could see the tenants in the rental unit they did not come to the door.

The tenants also note that when they raised an issue in the tenancy regarding the rebuilding of a shed on October 26, 2010 and on October 28, 2010 they were issued a 1 Month Notice to End Tenancy for Cause. It was after this the landlord would not return their calls.

The landlord's claim is outlined as follows:

Description	Amount
November 2010 rent	\$1,000.00
Advertising of rental unit	\$36.00
Overholding – 4 days at \$75.00 per day	\$300.00
Total	\$1,336.00

Analysis

To be successful in making a claim of loss or damage the party making the claim must provide sufficient evidence to establish the following 4 points:

1. That a loss or damage exists;
2. That the loss or damage results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the loss; and
4. Steps taken to mitigate any loss or damage.

Since the landlord is seeking compensation for rent for the month of November, she cannot also seek overholding on per diem basis for any portion of the same time period. The landlord stated she was seeking the overholding amounts for November 12, 13, 14, and 15. She did confirm in the hearing that she understood that she could not seek overholding charges when also seeking the full rent. As such, this portion of the landlord's claim is dismissed.

As the landlord has provided no evidence to support her claim that she had to advertise the rental unit, I find the landlord has failed to establish the value of any loss regarding advertising and dismiss this portion of the landlord's claim.

While I accept the tenants made all possible efforts to pay the rent and it was the landlord's actions that caused the tenants to not be able to fulfill their payment obligations, Section 26 of the *Act* requires tenants to pay rent when it is due.

The landlord has provided no evidence as to when she entered into a new tenancy agreement with new tenants or when they could move into the rental unit. The landlord was aware that the tenants had vacated the rental unit by November 15, 2010 and confirmed the new tenants moved into the rental unit on November 26, 2010.

The landlord provided no reasons why the new tenants did not move in earlier. As the landlord allowed new tenants to move in prior to the end of this tenancy, she is not entitled to any rent from these tenants for that period, regardless of whether or not she received rent from the new tenants.

This combined with the landlord's own testimony that she did not bother to try and contact the tenants to even discuss the matter of the unpaid rent, I find the landlord failed to meet her obligations under Section 7(2) of the *Act*.

This section stipulates that a landlord who claims compensation for damage or loss that results from the tenant's non-compliance with the *Act*, regulation or tenancy agreement, must do whatever is reasonable to minimize the damage or loss. I accept the tenants are responsible for rent for the time they still had possession of the rental unit.

Conclusion

I find that the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$500.00** comprised of rent owed. As the landlord is only partially successful in her claim, I dismiss her application to recover the filing fee.

I order the landlord may deduct the security deposit and interest held in the amount of \$500.00 in full satisfaction of this claim.

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 07, 2010.

Dispute Resolution Officer