



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, MND, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord to obtain an Order of Possession, a Monetary Order for unpaid rent and utilities and for damage to the unit, site or property. The landlord also seeks an Order to keep all or part of the security deposit and pet deposit and to recover the cost of the filing fee.

Service of the hearing documents, by the landlord to the tenants, was done in accordance with section 89 of the *Act*; they were handed to the tenants in person on November 18, 2010. The landlords' agent attending the hearing gave affirmed testimony that the tenants were served as declared.

The landlords' agent appeared, gave affirmed testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form. There was no appearance for the tenants, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*.

Issues(s) to be Decided

- Is the landlord entitled to an Order of Possession due to unpaid rent?
- Is the landlord entitled to a monetary Order to recover rent owed and late fees?
- Is the landlord entitled to a Monetary Order for damage to the rental unit?
- Is the landlord entitled to keep the security deposit?



Dispute Resolution Services

Page: 2

Residential Tenancy Branch
Ministry of Housing and Social Development

Background and Evidence

This tenancy started on September 01, 2009. Rent for this unit was \$880.00 and increased to \$908.16 per month on September 01, 2010. Rent is due on the first of each month. The tenants paid a security deposit of \$440.00 on August 26, 2009 and a pet damage deposit of \$440.00 on September 23, 2009.

The landlord's agent testifies that the tenants had not paid the rent increase of \$28.16. The landlord issued a 10 Day Notice to End the Tenancy for unpaid rent on October 07, 2010. This was handed to one of the tenants in person. This Notice stated that the tenants owed rent of \$28.16 that was due on October 01, 2010. The tenants had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on October 19, 2010. The tenants did not pay the outstanding rent or dispute the Notice within five days. The landlord states the tenant did pay \$28.16 on November 05, 2010 and this was accepted for use and occupancy only. Since that time the tenants have not paid all the rent for December, 2010 and owe a balance of \$10.00. The landlord states there is a section of the tenancy agreement addendum which states a late fee of \$25.00 will be applied for rent that is not paid on the due date. The landlord seeks to recover \$50.00 in late fees for October and December, 2010.

The landlords' agent testifies that the tenants have not paid any of their additional Hydro charges since February, 2010. He states the landlord agreed he would pay the first \$50.00 of Hydro and any amount over that would be the tenant's responsibility. The landlord has provided copies of the Hydro bills and letters sent to the tenants each month demanding payment of these accounts. The landlords' agent states the tenants now owe a total sum of \$242.15 for unpaid hydro.

The landlords' agent testifies that the tenants have caused some damage to the rental unit. He has provided a copy of the move in condition inspection and letters to the tenants detailing the damage to the carpets caused by a large ink stain and tears in the carpets caused by the tenants' cat. The landlords' agent states the tenants agreed to pay the deductible for a broken window at the unit to the sum of \$150.00 but have not yet paid that amount. The landlord seeks



Dispute Resolution Services

Page: 3

Residential Tenancy Branch
Ministry of Housing and Social Development

to recover the sum of \$1,700.00 for a replacement carpet for this two bedroom unit. The landlord has estimated this amount based on a price paid for a one bedroom units carpets.

The landlords' agent testifies that due to the unclean conditions in the tenants unit they were found to have cockroaches. The landlord paid to have these treated by a pest control company at a cost of \$280.00 to prevent these spreading to other units. The landlord seeks to recover the cost of this treatment from the tenants and has provided in invoice for this treatment.

The landlord has applied to retain the tenants' security deposit in partial payment towards the rent arrears. The landlord has also applied for an Order of Possession to take effect as soon as possible.

Analysis

The tenants did not appear at the hearing, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I find that the landlords are entitled to recover rent arrears for December, 2010 of **\$10.00**, late fees of **\$50.00** and the sum of **\$242.15** in unpaid Hydro pursuant to section 67 of the Act.

With regards to the landlords claim for damage to the rental unit; when making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

In this instance I find the landlords have provided sufficient evidence to support their claim that the tenants were responsible for the broken window and as such agreed to pay the deductible of \$150.00. I also find the landlord has established his claim for cockroach treatments of \$280.00. However, with regards to the landlords claim for new carpets he has established that there is damage to the carpets and that this damage was caused by the tenants however the landlord

has not yet established the actual cost of replacement for these carpets and has provided no evidence to show that the replacement costs would be \$1,700.00. Consequently I find the landlord is entitled to recover the sum of **\$150.00** for the glass and **\$280.00** for the treatment for cockroaches pursuant to section 67 of the *Act* but I dismiss his claim for carpet replacement costs with leave to reapply.

I order the landlords pursuant to s. 38(4)(b) of the *Act* to keep the tenant's security deposit of \$440.00 and part of the pet deposit in partial payment of the damages, rent arrears, late fees and unpaid utilities.

As the landlord has been partially successful in this matter, he is also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

The landlord will receive a monetary order for the balance owing as follows:

Outstanding rent and late fees	\$60.00
Cockroach treatment	\$280.00
Deductible for broken window	\$150.00
Subtotal	\$800.00
Less security Deposit and pet deposit	(-\$880.00)
Plus filing fee	\$50.00
Total amount remaining of pet deposit	\$30.00

I accept that the tenants were served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not pay the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.



Dispute Resolution Services

Page: 5

Residential Tenancy Branch
Ministry of Housing and Social Development

Based on the foregoing, I find that the tenants are conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice and grant the landlord an order of possession.

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. As the security deposit and pet deposits held covered the monetary award no Monetary Order will be issued.

The remainder of the security deposit of \$30.00 must be returned to the tenants or otherwise dealt with in compliance with section 38 of the *Act*.

The landlord is at liberty to reapply for damage to the carpets and replacement costs.

I HEREBY ISSUE an Order of Possession in favour of the landlords effective **two days** after service on the tenants. This order must be served on the Respondents and may be filed in the Supreme Court and enforced 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 08, 2010.

Dispute Resolution Officer