



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR OPB MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords to obtain an Order of Possession for unpaid rent and breach of an agreement, and a Monetary Order for unpaid rent or utilities, to keep all or part of the security deposit, 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.

Service of the hearing documents, by the Landlords to the Tenant, was done in accordance with section 89 of the *Act*, served personally by the male Landlord to the Tenant on November 22, 2010, in the presence of the female Landlord. The Landlords did not serve the Tenant with a copy of the amended application which was filed at the *Residential Tenancy Branch* on December 3, 2010.

The Landlords appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form. No one attended the teleconference hearing on behalf of the Tenant despite him being served notice of this hearing in accordance with the Act.

Issues(s) to be Decided

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

Background and Evidence

The parties entered into a written fixed term tenancy agreement effective April 1, 2010, which was set to switch to a month to month tenancy after March 31, 2011. Rent was payable on the first of each month in the amount of \$700.00 and a security deposit of

\$350.00 was paid on April 1, 2010. The Landlords conducted a move-in inspection report on March 31, 2010 in the presence of the Tenant.

The Landlords advised that at the end of October 2010 the Tenant came to them with a friend to advise them he was in a bad state and had to go into rehab. His friend spoke on his behalf and told the Landlords that the Tenant would not be paying rent and wanted out of the fixed term tenancy agreement. The Landlords told them that they would have to think about the situation and would get back to them. The next day the Landlords went to the Tenant's friend's home and told the Tenant that they were not willing to let him out of the lease and he is required to pay the November 2010 rent.

When the Tenant failed to pay the November 1, 2010 rent they issued a 10 Day Notice to End Tenancy which indicates \$700.00 was unpaid rent, \$15.00 for unpaid internet, and \$30.00 for unpaid hydro for September and October 2010. The Landlords had provided the Tenant with a copy of the two month hydro bill for \$90.00 at the end of October and as per the lease he was required to pay 1/3 of that bill. The Notice was served personally to the Tenant on November 10, 2010 at the rental unit when the Tenant was in the process of moving his possessions out of the unit. The Tenant returned to the unit on November 14, 2010, moved a few more smaller items out of the kitchen and left the key to the rental unit on the counter.

The Landlords regained possession of the unit after the Tenant abandoned it on November 14, 2010, and therefore the Landlord's no longer require an Order of Possession. They have repaired and cleaned the unit then advertised it and have re-rented it effective December 15, 2010. The Landlords are seeking \$700.00 for November 1, 2010 rent, \$15.00 for November internet charges, \$30.00 for September and October hydro which remains unpaid, \$350.00 for loss of rent for half of December 2010, \$84.00 for removal of the debris left behind by the Tenant, \$49.26 to shampoo the living room carpet, and \$195.92 to replace the bedroom carpet. The bedroom carpet was approximately 10 years old and was replaced November 26, 2010.

Analysis

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

Order of Possession - The Landlords have regained possession of the unit pursuant to section 44 (1)(d) of the Act; therefore they withdrew their request for an Order of Possession.

Claim for unpaid rent and utilities. The Landlords claim for unpaid rent of \$700.00 for November 2010, \$15.00 for November internet, and \$30.00 for September and October hydro, pursuant to section 26 of the Act which stipulates a tenant must pay rent and utilities when they are 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. I accept the Landlords' testimony that they issued a written demand to the Tenant for payment of the hydro bill prior to issuing the 10 Day Notice to End Tenancy on November 10, 2010. I find that the Landlord has proven the test for loss as listed above and I hereby approve their claim in the amount of \$745.00 (\$700.00 + 15.00 + 30.00).

Loss of Rent – Section 45 (2) of the Act provides that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than the date specified in the tenancy agreement as the end of the tenancy. In this case the Tenant failed to provide the Landlords with notice to end the tenancy. The Landlords mitigated their losses by re-renting the unit effective December 15, 2010 causing them a loss of one half of a month's rent. Based on the aforementioned I find the Landlords have proven the test for loss and I approve their claim for loss of rent in the amount of \$350.00.

Debris removal– The Tenant abandoned the unit leaving debris inside the unit in contravention of section 37 of the Act that states when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean. The Landlords provided evidence which supports that they paid \$84.00 for the removal of this debris. Therefore I find the Landlords have proven their claim in the amount of \$84.00.

Shampoo Living Room Carpet – The Tenant did not have the carpets cleaned at the end of the tenancy pursuant to section 37 of the Act, causing the Landlords to suffer the cost of \$49.26 to have the carpets cleaned. Based on the aforementioned I find the Landlords have proven the test for loss and I approve their claim of \$49.26.

Bedroom Carpet Replacement – The move-in inspection report indicates the bedroom carpet had 6 small burns in it and the Landlords have testified the age of the carpet to be approximately ten years old. Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the repair or replacement cost by the depreciation of the original item. In this case the bedroom carpet had surpassed its useful life. There is no evidence to support the Tenant caused additional damage to the carpet rather the evidence supports the Tenant failed to have the carpet steam cleaned. Based on the aforementioned I find the Landlords have failed to prove the test for damage or loss to the bedroom carpet and I dismiss their claim of \$195.92.

Filing Fee \$50.00 - I find that the Landlords have primarily succeeded with their application; therefore I award recovery of the filing fee.

Monetary Order – I find that the Landlords are 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	\$700.00
Loss of rent for ½ of December 2010	350.00
Debris removal	84.00
Carpet cleaning	49.26
Filing fee	50.00
Subtotal (Monetary Order in favor of the Landlords)	\$1,278.26
Less Security Deposit of \$350.00 plus interest of \$0.00	-350.00
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORDS	\$928.26

Conclusion

A copy of the Landlords' decision will be accompanied by a Monetary Order for **\$928.26**. 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 14, 2010.

Dispute Resolution Officer