



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR MNR MNSD

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for unpaid rent, a Monetary Order for unpaid rent or utilities, to keep all or part of the security deposit, and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents, by the Landlord to the Tenant, were served via registered mail by the Landlord to the Tenant on December 8, 2010. The Tenant confirmed receipt of the hearing documents and the evidence.

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

Issues(s) to be Decided

1. Has the Tenant breached the *Residential Tenancy 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 October 15, 2010 which is set to switch to a month to month tenancy after April 30, 2011. Rent is payable on the first of each month in the amount of \$1,400.00. The Tenant paid a security deposit of \$700.00 on October 18, 2010 and although the tenancy agreement indicates the Tenant paid a pet deposit of \$200.00 the parties confirmed the latter deposit was not paid and remains outstanding.



Dispute Resolution Services

Page: 2

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

The Landlord testified that when the Tenant's December 2010 rent cheque was returned NSF he served the Tenant with a 10 Day Notice to End Tenancy in person on December 8, 2010.

At this point the Tenant has failed to pay December 2010 and January 2011 rent so the Landlord is seeking a monetary order for \$2,800.00 (2 x \$1,400.00).

The Tenant confirmed she is awaiting a divorce settlement and she has not paid the December 2010 or January 2011 rent.

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 Landlord 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 or apply to dispute the 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.

Claim for unpaid rent. The Landlord claims for unpaid rent of \$2,800.00 at \$1,400.00 per month for December 2010 and January 2011, pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due. 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. After reviewing the evidence I find the Landlord has proven his claim for damage or loss, as listed above, in the amount of \$2,800.00.



Dispute Resolution Services

Page: 3

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

The Landlord has succeeded with his claim therefore I award recovery of the \$50.00 filing fee from the Tenant.

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 December 2010 and January 2011(2 x \$1,400.00)	\$2,800.00
Subtotal (Monetary Order in favor of the landlord)	\$2,850.00
Less Security Deposit of \$700.00 plus interest of \$0.00	-700.00
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$2,150.00

Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenant**. This order must be served on the Respondent Tenant 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 **\$2,150.00**. 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: January 10, 2011.

Residential Tenancy Branch