



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR MNR MNSD FF

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 Tenants for this application.

Service of the hearing documents, by the Landlord to each Tenant, were served via registered mail on January 7, 2011. Canada Post receipts were provided in the Landlord's evidence. Each Tenant is deemed to have been served notice of today's hearing on January 12, 2011, five days after they were mailed, in accordance with section 90 of the Act.

The Landlord appeared at the teleconference hearing, gave affirmed testimony, was provided the opportunity to present their evidence orally, in writing, and in documentary form. No one appeared on behalf of the Tenants despite them being served notice of today's hearing in accordance with the Act.

Issues(s) to be Decided

1. Did the Tenants breach the *Residential Tenancy Act*, regulations, 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

The Landlord testified the parties entered into a written fixed term tenancy agreement as supported by his evidence. The agreement was effective November 5, 2009 and switched over to a month to month tenancy after October 31, 2010. Rent is payable on

the first of each month in the amount of \$870.00. The Tenants paid a security deposit of \$435.00 on November 4, 2009.

When the Tenants failed to pay their December 1, 2010 rent the Landlord served the Tenants a 10 Day Notice to End Tenancy on December 22, 2010 at 6:00 p.m. when it was posted to their door. The Landlord referred to the tenant ledger provided in his evidence which supports there was an accumulated unpaid balance of \$2,977.30 which included the cost of rent and utilities to January 2, 2011. The Tenants have not returned the keys to him so to the best of his knowledge the Tenants are still occupying the rental unit and he is seeking an Order of Possession.

Analysis

All of the testimony and documentary evidence was carefully considered.

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 Tenants failed to pay the rent or apply to dispute the Notice within 5 days after receiving this Notice, and that the Tenants are 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 the accumulated unpaid rent of \$2,977.30 (rent and utilities) up to January 1, 2011, pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due. I find that the Tenants have 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 before me I find the Landlord has proven his claim for loss, as listed above, in the amount of \$2,977.30.

Filing Fee \$50.00. I find that the Landlord has succeeded with his claim and I hereby award recovery of the 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 Tenants' security deposit as follows:

Accumulated unpaid rent up to January 1, 2011	\$2,977.30
Filing fee	<u>50.00</u>
Subtotal (Monetary Order in favor of the landlord)	\$3,027.30
Less Security Deposit of \$435.00 plus interest of \$0.00	-435.00
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$2,592.30

Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenants**. This order must be served on the Respondent Tenants 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 **\$2,592.30**. The order must be served on the Respondent Tenants 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 25, 2011.

Residential Tenancy Branch