



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes ERP, LRE, OPR, MNR, MNSD, FF

Introduction

This hearing dealt with cross applications. The tenant had applied for Orders for emergency repairs and to set conditions upon the landlord's right to enter the rental unit. The landlord made an amended application for an Order of Possession for unpaid rent, a Monetary Order for unpaid rent, and authorization to retain the security deposit. The landlord and the landlord's agent appeared at the hearing; however, the tenant did not appear at the hearing despite leaving the teleconference call open 20 minutes after the hearing commenced.

The landlord and landlord's agent confirmed they were served with the tenant's application. Since the landlord and landlord's agent appeared and were prepared to deal with the tenant's application, in the absence of the tenant I dismissed the tenant's application without leave to reapply.

With respect to the landlord's application, I was provided evidence that the tenant was served with the landlord's original application via registered mail sent to the tenant at the rental unit on December 14, 2010. The landlord amended the application on December 16, 2010 and served the amended application upon the tenant by taping it to the rental unit door on December 17, 2010 in the presence of a witness. The landlord provided a signed statement from a witness to the posting of hearing documents on the rental unit door on December 17, 2010. Upon enquiry, the landlord's agent stated the tenant was residing in the rental unit until December 22, 2010.

I am satisfied the tenant was served with the landlord's original application in accordance with the requirements of section 89 of the Act. Although the landlord did not serve the amended monetary claim upon the tenant in a manner that complies with section 89(1) of the Act, by the authority afforded me under section 71(2) I deem the landlord's amended application sufficiently served upon the tenant. Accordingly, I proceeded to hear from the landlord and the landlord's agent without the tenant present.

As I heard the tenant has vacated the rental unit I have determined an Order of Possession is no longer required and I do not provide one with this decision.

Issue(s) to be Decided

1. Has the landlord established an entitlement to unpaid rent for the month of December 2010?
2. Has the landlord established an entitlement to loss of rent for the month of January 2011?
3. Is the landlord authorized to retain the security deposit?

Background and Evidence

I was provided the following undisputed evidence by the landlord and the landlord's agent.

The one-year fixed term tenancy commenced February 1, 2010 and the tenant paid a \$600.00 security deposit. The tenant is required to pay rent of \$1,200.00 on the 1st day of every month. The tenant failed to pay rent for the month of December 2010 and on December 6, 2010 the landlord's agent personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice). The Notice indicates rent of \$1,200.00 was outstanding as of December 1, 2010 and has an effective date of December 16, 2010. The tenant did not pay the outstanding rent for December 2010.

The landlord and landlord's agent testified as follows. The tenant stated that he was not going to move out and protested any showings to prospective tenants. Further, upon serve of the tenant's application, the landlord posted a Notice of Entry in order to determine the repairs required but the tenant objected to the landlord's entry.

I also heard that on December 22, 2010 the landlord's agent observed a moving truck at the rental unit and the tenant removing possessions from the rental unit. On December 23, 2010 the landlord's agent attended the unit and found the unit vacant. The rental unit has not yet been re-rented.

With this amended application the landlord is seeking to recover unpaid for December 2010 and loss of rent for the month of January 2011.

Provided as documentary evidence for this hearing were copies of: the tenancy agreement; the 10 Day Notice; proof of service of the 10 Day Notice; rent receipts; the registered mail receipt for the landlord's original application; proof of service of the landlord's amended application; and Notice of Entry served upon the tenant.



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Analysis

Upon consideration of all of the evidence before me, I make the following findings with respect to the landlord's monetary claims.

Under the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement whether or not the landlord complies with the Act, regulations or tenancy agreement unless the tenant has a right under the Act to make any deductions from rent.

I am satisfied the tenant was required to pay rent of \$1,200.00 on December 1, 2010 in accordance with the tenancy agreement and failed to do so. I find no basis under the Act that would permit the tenant to withhold rent payable for the month of December 2010. I am also satisfied the tenant did not pay rent for the month of December 2010 at any other time despite being served with a Notice to End Tenancy for Unpaid Rent. Therefore, I find the landlord has established an entitlement to recover unpaid rent of \$1,200.00 for the month of December 2010.

As the parties agreed to a fixed term of one-year the tenant is bound to pay rent for the duration of the term. Where a tenant violates a fixed term the landlord is entitled to recover loss of rent for the remainder of the term provided the landlord has taken reasonable steps to minimize the loss. Having heard the tenants interfered with the landlord's ability to show the unit to prospective tenants or allow the landlord to inspect the rental unit for necessary repairs I find the tenant's actions inhibited the landlord's ability to re-rent the unit for January 2011. Therefore, I find the landlord has established an entitlement to recover loss of rent from the tenant for the month of January 2011.

Since the landlord has established an entitlement to unpaid rent, I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the rent owed. I also award the filing fee to the landlord.

With this decision the landlord is provided a Monetary Order calculated as follows:

Unpaid rent – December 2010	\$ 1,200.00
Loss of rent – January 2011	1,200.00
Filing fee	50.00
Less: security deposit	<u>(600.00)</u>
Monetary Order for landlord	\$ 1,850.00

The Monetary Order must be served upon the tenant and may be enforced in Provincial Court (Small Claims) as an Order of that court.



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Conclusion

The tenant has vacated the rental unit and an Order of Possession is not provided with this decision. The landlord was successful in establishing an entitlement to compensation for unpaid rent and loss of rent for the months of December 2010 and January 2011. The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance of \$1,850.00 to serve upon the tenant.

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 04, 2011.

Residential Tenancy Branch