



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the landlord for a Monetary Order for unpaid rent, a Monetary Order for money owed or compensation for loss or damage under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement, an Order to keep the security deposit and to recover the filing fee for this application. The landlords' agent withdrew her application for an Order of Possession as the tenant has moved from the rental unit.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and were sent by registered mail to the tenant on December 24, 2010.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order to recover unpaid rent?
- Is the landlord entitled to a Monetary Order to recover a loss of revenue for January, 2011?
- Is the landlord entitled to keep the tenants security deposit?

Background and Evidence

Both parties agree that this tenancy started on August 01, 1997. The Parties had a verbal tenancy agreement and the tenant moved from the rental unit on January 02, 2011. The rent for this unit was \$950.00 per month and was due on the 1st day of each month. The tenant paid a security deposit of \$475.00 on August 01, 1997.

The landlords' agent testifies that a previous hearing was held on November 18, 2010 to deal with a mutual agreement to end the tenancy signed by both Parties. The landlord was successful at this hearing and was given an Order of Possession effective on November 30, 2010.

The landlords' agent testifies that the tenant did not pay rent for November or December 2010 and she did not move from the rental unit on November 30, 2010. The landlords agent states the tenant was served with a 10 Day Notice to End Tenancy for unpaid rent and a Two Month Notice to End Tenancy on December 10, 2010 because the all the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give notice because the purchaser or a close family member intends in good faith to occupy the rental unit. The landlords' agent states the tenant was also served with another Two Month Notice for the same reasons on November 30, 2010 but as this notice had not been dated it was invalid. The purchaser intends to move into the unit on February 01, 2011.

The landlords' agent states the tenant did not move from the unit until January 02, 2011 and they seek a loss of rental income for January, 2011 of \$950.00. The landlord also seeks to recover the sum of \$1,900.00 in unpaid rent for November and December, 2010.

The landlord seeks to keep the tenants security deposit of \$475.00 and accrued interest of \$61.92 to offset against the outstanding rent.

The tenant disputes the landlords' claims. The tenant states she did sign a mutual agreement to end the tenancy and agrees the landlord was successful in obtaining an Order of Possession to take effect on November, 30, 2010. However, the tenant states she was told by the realtor at the time that she could stay in the rental unit until it was sold. The tenant states at the previous hearing the decision stated that "The parties remain at liberty to mutually agree, in writing, to reinstate the tenancy or enter into a new tenancy agreement". The tenant states that although

she was told by the realtor she could stay in the unit the landlord would not enter into a new tenancy agreement to reinstate the tenancy at that time.

The tenant states she was served with a Two Month Notice to End Tenancy on November 30, 2010 in person and her copy of this Notice was dated and signed and was therefore valid. She states she was then served with another Two Month Notice to End Tenancy on December 10, 2010 along with a 10 Day Notice to End Tenancy for unpaid rent.

The tenant does not dispute that she did not pay rent for November or December, 2010. The tenant states she was confused whether she had a tenancy at this point, whether she must move out as per the Order of Possession or whether she was entitled to compensation equivalent to one months' rent due to either of the Two Month Notices. The tenant state as she was told she could remain at the unit until it was sold it was too late to find alternative accommodation before Christmas and so she remained in the unit until January 02, 2010.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. I find the tenant was served the Order of Possession which ordered her to vacate the rental unit on November 30, 2010. The landlords' realtor told the tenant she could stay in the unit until it was sold, however the landlord and tenant did not enter into another tenancy agreement which would have reinstated the tenancy after November 30, 2010.

The tenant does not dispute that she did not pay rent for November or December, 2010 and due to this, at the time the 10 Day Notice to End Tenancy was given to the tenant it was a valid document. The Two Months Notices would only have taken effect had the tenant cancelled the 10 Day Notice by paying her outstanding rent within the five days specified on the 10 Day Notice. Consequently, it is the 10 Day Notice which remains in force and effect and the two Month Notices do not come into effect and the tenant is not entitled to claim the last month's rent in compensation for this Two Month Notice.

It is therefore my decision that the landlord is entitled to recover unpaid rent from the tenant for November and December, 2010 to the sum of **\$1,900.00** pursuant to s. 67 of the *Act*. I also find

as the tenant overheld at the rental unit for two days in January, 2011 the landlord is entitled to recover the sum of **\$61.29** for these two days pursuant to s. 67 of the *Act*. The landlord is not entitled to recover the remainder of rent for January, 2011 as the unit had been sold and the landlord was not advertising the unit for rent therefore no lost earning would incur for January, 2011 and this portion of the landlords claim is denied.

I find the landlord is entitled to keep the tenants security deposit and accrued interest of **\$536.92** and this amount has been offset against the outstanding rent pursuant to s. 38(4)(b) of the *Act*.

As the landlord has been partially successful she is also entitled to recover the **\$50.00** filing fee from the tenant pursuant to section 72(1) of the *Act*. A Monetary Order has been issued for the following amount:

Unpaid rent November and December, 2010	\$1,900.00
Subtotal	\$1,961.29
Plus filing fee	\$50.00
Less security deposit and accrued interest	(-\$536.92)
Total amount due to the landlord	\$1,474.37

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,474.37**. The order must be served on the respondent 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 17, 2011.

Residential Tenancy Branch