

## **DECISION**

**Dispute Codes:** *OPR, MNR, MNSD, CNR, MNDC, FF*

### **Introduction.**

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and for a monetary order for unpaid rent. The landlord also applied for the filing fee and to retain the security deposit in partial satisfaction of his claim.

The tenant applied to cancel the notice to end tenancy for non payment of rent, for a monetary order for compensation and for the return of his security deposit.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

### **Issues to be decided**

Is the landlord entitled to an order of possession and a monetary order for unpaid rent?

Is the tenant entitled to compensation for loss under the *Act*?

### **Background and Evidence**

This month to month tenancy started on May 01, 2010. The monthly rent was set at \$495.00 payable on the first of each month. Prior to moving in, the tenant paid a security deposit of \$250.00. The tenancy agreement contains a clause that requires the tenant to pay a late fee of \$25.00.

The rental unit is a three level house with an attic and has 8 tenants in common renting rooms and sharing washrooms. The tenant has a refrigerator and hot plate in his room which is the only kitchen facility provided by the landlord. The tenant stated that the room has only one plug point and the power was constantly tripping due to use of this outlet for multiple appliances.

The tenant stated that his computer would lose power when in use and therefore he lost a lot of his data which eventually resulted in the loss of his computer. The tenant made several requests for the power supply to be upgraded, but the landlord refused to upgrade the service and instead advised the tenant against the use of multiple appliances. The tenant is applying for compensation in the amount of \$745.00 for the loss of his computer (\$495.00) plus the security deposit (\$250.00).

The tenant failed to pay rent for February and on February 02, 2011, the landlord served the tenant with a ten day notice to end tenancy. The landlord has applied for an order of possession and a monetary order in the amount of \$745.00 which consists of rent for February (\$495.00) plus late fees for February and all the previous months that the tenant was late paying rent. The landlord did not file any evidence to support his claim for late fees prior to one for February 2011.

### **Analysis**

Based on the documentary evidence and sworn testimony of both parties, I find that the tenant rented a room with a limited power supply and therefore was required to use the facility within its means. Using the outlet for multiple appliances at the same time could have contributed to the loss of the tenant's computer. However, this loss did not result from negligence on the part of the landlord. In addition, the tenant has not filed any evidence to support that his claim of \$495.00 for the loss of his computer stemmed from negligence on the part of the landlord. Accordingly, I find that the tenant has not established a claim for \$495.00.

Based on the sworn testimony of both parties, I accept the landlord's evidence in respect of the claim. Pursuant to section 46 (4) of the *Residential Tenancy Act* within five days after receiving the notice to end tenancy, the tenant may pay the overdue rent or dispute the notice by making application for dispute resolution. If the tenant does not pay rent 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, by that date.

The tenant received the notice to end tenancy on February 02, 2011 and did not pay overdue rent within five days of receiving the notice. Therefore the notice is upheld.

Pursuant to section 55(2) I am issuing a formal order of possession effective two days after service on the tenant. This Order may be filed in the Supreme Court for enforcement.

I find that the landlord has established a claim for rent for February in the amount of \$495.00 plus a late fee of \$25.00 for a total of \$520.00. The landlord has not proven his claim for late fees that were incurred prior to February 2011. Since the landlord has proven a major portion of his case, he is also entitled to the filing fee of \$50.00.

Overall the landlord has established a claim of \$570.00. I order that the landlord retain the security deposit of \$250.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$320.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

### **Conclusion**

I grant the landlord an order of possession effective two days after service on the tenant and a monetary order in the amount of **\$320.00**.

The tenant's application is dismissed in its entirety.

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: February 18, 2011.

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Residential Tenancy Branch