



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR MNR MNDC FF

Preliminary Issues

After reviewing the Landlord's application for dispute resolution, at the outset of the hearing, the Landlord requested to amend the style of cause on his application to include that he was the executor of his father's estate and to include the estate of his father as a Landlord to this application.

The Landlord had indicated that he was the executor of his father's estate in the notes written in the details of the dispute; therefore the Tenant was made aware of the Landlord's authority to make this claim in the initial application and would not be prejudiced by the Landlord's request to amend the application. Based on the aforementioned I approve the Landlord's request to amend the application, pursuant to # 23 of *Residential Tenancy Policy Guidelines*.

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, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, 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 completed in person, at the rental unit on February 12, 2011. I find the Tenant was sufficiently served notice of this hearing in accordance with the Act.

The Landlord appeared at the teleconference hearing, gave affirmed testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form. No one appeared on behalf of the Tenant despite her being served notice of this hearing in accordance with the Act.

Issues(s) to be Decided

1. Has the Tenant breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. Is so, has the Landlord met the burden of proof to obtain an Order of Possession and a Monetary Order as a result of that breach?

Background and Evidence

The Landlord testified that his father passed away, in hospital, on November 30, 2010. His father had been residing in the main floor of the house with a lady roommate and the Tenant and her boyfriend were residing in the basement suite. The Tenants were previous friends of the lady who was residing on the main floor so it was this lady who informed the Tenants on December 1, 2010 of his father's passing.

The Landlord attended the rental unit on December 1, 2010 to collect December's rent when he was told by the Tenant that they were very good tenants and always paid their rent early and that they had paid their December 2010 rent early to his father. The Landlord accepted this and allowed the Tenant and occupants to remain in the unit for December; however the Tenant was told she would have to be out of the rental unit by the end of January 2011.

When he attend the rental unit on January 1, 2011 to collect rent a stranger answered the door and told him the Tenant was sleeping so he would have to wait. He waited about five minutes and knocked again when the Tenant's boyfriend answered and told him she was sleeping. The Landlord left and later spoke with the Tenant who told him she had paid part of January rent to his father before he passed away and that she had written this on her calendar. The Tenant did not have receipts to prove her rent was paid. The monthly rent is \$800.00 per month and \$400.00 is supposed to be paid by Income assistance and \$400.00 cash from the Tenant. So when the Landlord questioned the Tenant about the location of the Income Assistance cheque for January 2011, he was told that she gave it back to the Ministry to request to have the name changed from his father's to his.

Now when he calls the Tenant she does not answer her phone and he has not been paid rent for January, February or March 2011. He issued a 10 Day Notice to End Tenancy for unpaid rent on February 2, 2011 at 11:35 a.m. when it was served personally to the Tenant's boyfriend, who resides at the rental unit, in the presence of a witness. When he served the hearing package to the Tenant she asked what it was. She told the Landlord that she could not be out of the rental unit until the end of

February 2011. Then yesterday, March 1, 2011 the Lady from upstairs called him to tell him the Tenant has not moved yet because she has been sick.

The Landlord is seeking an Order of Possession for as soon as possible and a Monetary Order for \$2,400.00 for the accumulated unpaid rent for January, February and March 2011.

Analysis

Upon consideration of the evidence before me, in the absence of any evidence from the Tenant who did not appear despite being properly served with notice of this proceeding, I accept the version of events as provided by the Landlord.

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 \$2,400.00 at \$800.00 per month for January 2011, February 2011, and March 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 in the amount of \$800.00. After reviewing the evidence I find the Landlord has proven his claim for damage or loss, as listed above, in the amount of **\$2,400.00**.

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

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.

A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$2,450.00** (\$2,400.00 + 50.00). 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: March 02, 2011.

Residential Tenancy Branch