



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR MNR

Introduction

This was a reconvened hearing which dealt with an Application for Dispute Resolution by the Landlord seeking an Order for Possession and a Monetary Order for unpaid rent. The landlord originally applied through the direct request process which, upon review, was scheduled for a conference call hearing in accordance with section 74 of the *Residential Tenancy Act*.

Service of the reconvened hearing documents was done in accordance with section 89 of the *Act*, served personally to each Tenant by the Landlord on February 24, 2011.

The Landlords appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Have the Tenants breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, have the Landlords proven entitlement to an Order of Possession and a Monetary Order as a result of that breach?

Background and Evidence

The parties' most recent tenancy agreement was effective September 1, 2010 and was set to switch to a month to month tenancy after November 30, 2010. Rent was payable on the first of each month in the amount of \$2,600.00 and the Tenants paid \$1,300.00 on February 16, 2010 as the security deposit.

The Landlords testified that when the Tenants failed to pay their rent in full a 10 Day Notice to End Tenancy for unpaid rent was served personally to the Tenants on January 24, 2011 at 7:00 p.m. The Tenants vacated the property on March 6, 2011, so the Landlords confirmed they wished to withdraw their request for an Order of Possession

and are only seeking \$5,000.00 in unpaid rent (\$2,500.00 for December 2010 and \$2,500.00 for January 2011). They requested to reduce their monetary claim so they did not have to pay the higher filing fee.

Analysis

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 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 – The Landlords withdrew their request for an Order of Possession.

Claim for unpaid rent - The Landlords claim for the accumulated unpaid rent of \$5,000.00 which is \$2,500.00 for December 2010 plus \$2,500.00 for January 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 their tenancy agreement which stipulates that rent is due monthly on the first of each month; therefore I approve the Landlords' claim of **\$5,000.00**.

Conclusion

I HEREBY FIND in favor of the Landlords' monetary claim. A copy of the Landlords' decision will be accompanied by a Monetary Order for **\$5,000.00**. 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: March 15, 2011.

Residential Tenancy Branch