



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord seeking an Order of Possession for unpaid rent, a Monetary Order for unpaid rent, to keep the security deposit in partial satisfaction of their claim, 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.

Service of the hearing documents was done in accordance with section 89 of the *Act*, sent via registered mail on February 18, 2011. The Canada Post tracking number was provided in the Landlord's evidence. The Tenant is deemed to be served the hearing documents on February 23, 2011, the fifth day after they were mailed as per section 90(a) of the *Act*.

The Landlord appeared at the teleconference hearing, gave affirmed testimony, was provided the opportunity to present her 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.

Issue(s) to be Decided

1. Has the Tenant breached the Act, regulation or tenancy agreement?
2. If 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 parties entered into a written month to month tenancy agreement effective November 1, 2010. Rent is payable on the first of each month in the amount of \$430.00 which is based on a subsidy. On October 15, 2010 the Tenant paid \$350.00 as the security deposit based on the market rent.

The Landlord testified that when the Tenant failed to pay the February 1, 2011 rent a 10 Day Notice to end Tenancy was posted to her door on February 4, 2011 for the unpaid rent of \$430.00 that was due February 1, 2011. The Tenant is still occupying the unit and has not paid rent for February or March for a total unpaid rent of \$860.00. The Landlord is seeking an immediate Order of Possession and a Monetary Order for the \$860.00 plus the 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 - 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 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 accumulated unpaid rent of \$860.00 for 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. I find the Landlord has met the burden of proof for a monetary order.

The Landlord has succeeded with their application; therefore I award recovery of the \$50.00 filing fee.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit as follows:

Unpaid Rent for February 2011 and March 2011 (2 x \$430.00)	\$860.00
Filing fee	50.00
Subtotal (Monetary Order in favor of the Landlord)	\$910.00
Less Security Deposit of \$350.00 plus interest of \$0.00	-350.00
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$560.00

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 and may be filed in the Supreme Court and enforced as an order of that Court.

I HEREBY FIND in favor of the Landlord's monetary claim. A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$560.00**. 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 10, 2011.

Residential Tenancy Branch