



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR MNR FF
 CNR OLC O

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking an Order of Possession for unpaid rent, a Monetary Order for unpaid rent and to recover the cost of the filing fee from the Tenant for this application.

The Tenant filed seeking an Order to cancel the notice to end tenancy for unpaid rent, to Order the Landlord to comply with the Act, and for other reasons.

Service of the Landlord's hearing documents to the Tenant was completed by mail. The Tenant confirmed he has not checked his mail so has not received the Landlord's hearing documents. Based on the testimony I find the Tenant has been sufficiently served notice of the Landlord's application.

Service of the Tenant's hearing documents to the Landlord was completed in person to the resident building manager. The Landlord confirmed receipt of the Tenant's hearing documents.

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

Issue(s) to be Decided

1. Has the Tenant breached the *Residential Tenancy 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?
3. Has the 10 Day Notice to End Tenancy been issued and served in accordance with the Act?
4. If not, has the Tenant met the burden of proof to have the 10 Day Notice to end tenancy canceled and have the Landlord comply with the Act?

Background and Evidence

I heard undisputed testimony that the parties entered into a written month to month tenancy agreement effective October 27, 2010. Rent is payable monthly in the amount of \$450.00 and the Tenant paid a security deposit of \$225.00 on approximately October 23, 2010.

The Landlord testified that when the Tenant failed to pay his rent on time a 10 Day Notice to End Tenancy was issued February 18, 2011 for \$450.00 outstanding rent that was due February 1, 2011. He states there has been no rent received since the Notice was posted to the Tenant's door on February 18, 2011. The Landlord is seeking an Order of Possession for as soon as possible and a Monetary Order.

The Tenant referred to his evidence of a copy of the December 2010 income assistance payment that was issued directly to the Landlord. He confirmed that the evidence he provided were copies of everything the Landlord had submitted as evidence. He argues

the rent payments are always paid directly to the Landlord and he submitted a copy of the February receipt he was given for the February rent payment. I asked the Tenant why he would be issued a receipt on February 3, 2011 for January 2011 rent if income assistance pays his rent in advance to which he responded the Landlord always gives him a receipt.

The Landlord confirmed that prior to January 2011 the rent was paid directly to this grandmother but for some reason this stopped as of January. He went to the welfare office and he was told that the Tenant was provided funds for his rent and that he should take steps to evict the Tenant. He also stated that the Tenant told him he knows how to stay in the unit without having to pay rent and can prolong this process. He confirms his building manager gave the Tenant a receipt for February 2011 rent and the Tenant told the building manager this was required for income assistance.

Analysis

I have carefully considered all of the testimony and documentary evidence before me.

Landlord's Application

I find that in order to justify payment of damages under sections 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. It is important to note that in a claim for damage or loss under the *Act*, the party claiming the damage or loss, in this case the Landlord, bears the burden of proof and the evidence furnished by the Applicant Landlord must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the *Act* or agreement

3. Verification of the Actual amount required to compensate for loss or to rectify the damage
4. Proof that the claimant followed section 7(2) of the *Act* by doing whatever is reasonable to minimize the damage or loss

In regards to the Landlords' right to claim damages from the Tenants, Section 7 of the *Act* states that if the landlord or tenant does not comply with this *Act*, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the *Act* grants a Dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

Order of Possession – I find that the 10 Day Notice to End Tenancy has been issued and served to the Tenant in accordance with section 46 of the *Act*. In the absence of evidence to support February 2011 and March 2011 rent has been paid, I accept the Landlord's testimony that the rent remains unpaid and I hereby grant the Landlord an Order of Possession in accordance with section 55 of the *Act*.

Claim for unpaid rent. The Landlord claims for unpaid rent of \$1,350.00¹ comprised of January, February and March 2011 rent (3 x \$450.00). There is evidence to support that the Tenant made a payment of \$450.00 for January 2011 rent on February 3, 2011, prior to the issuance of the 10 Day Notice. Therefore, in the absence of evidence to prove otherwise, I find that on a balance of probabilities the Tenant has failed to pay rent for February 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 Tenants have 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 that the Landlord has proven the test for loss as listed above and I hereby approve their claim for unpaid rent in the amount of **\$900.00**.

Filing Fee \$50.00- I find that the Landlord has succeeded with his application and is entitled to recover the cost of the **\$50.00** filing fee from the Tenant.

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 \$450.00) | \$900.00 |
| Filing fee | 50.00 |
| Subtotal (Monetary Order in favor of the Landlord) | \$950.00 |
| Less Security Deposit of \$225.00 | -225.00 |
| TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD | \$725.00 |

Tenant's Application

As I have granted the Landlord an Order of Possession and Monetary Order above, the Tenant's application no longer has merit and it is dismissed, without leave to reapply.

Conclusion

Landlords' Application

A copy of the Landlord's decision will be accompanied by an Order of Possession. This Order must be served upon the Tenant and may be filed in Supreme Court, as an Order of that Court.

A copy of the Landlords' decision will be accompanied by a Monetary Order for **\$725.00**. The order must be served on the Tenant and is enforceable through the Provincial Court as an order of that Court.

Tenants' Application

The Tenant's application is HEREBY DISMISSED, without leave to reapply.

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