



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes

For the tenant - OLC, FF

For the landlord – OPR, MNR, FF

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together. The tenant seeks an Order for the landlord to comply with the *Residential Tenancy Act (Act)*, regulations or tenancy agreement and to recover her filing fee. The landlords sought an Order of Possession for unpaid rent and to recover their filing fee. The landlord's have amended their application for a Monetary Order to recover unpaid rent. The tenant was aware of this amendment and agreed she did owe rent. At the outset of the hearing it was determined that the tenant has moved from the rental unit and the landlords withdraw their application for an Order of Possession; however have requested that the tenant returns the keys to the unit.

The tenant served the landlords in person on February 29, 2011 with a copy of the application and a Notice of the Hearing. The landlords served the tenant by registered mail on March 14, 2011 with a copy of the Application and Notice of Hearing. I find that both parties were properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issue(s) to be Decided

- Is the tenant entitled to an Order of the landlord to comply with the *Act*?
- Are the landlords entitled to a Monetary Order to recover unpaid rent?

Background and Evidence

Both Parties agree that this month to month tenancy started on August 01, 2010 and ended on March 06, 2011. Rent for this unit was \$900.00 per month and was due on the first day of each month in advance. The tenant paid a security deposit of \$450.00 on July 20, 2010.

The landlords' agent testifies that the tenant did not pay rent for February, 2010 and a 10 Day Notice was issued and served on the tenant, in person, on February 23, 2011. This Notice states the tenant has five days to pay the outstanding rent, or file an application to cancel the Notice or move from the rental unit by March 06, 2011. The landlords agent testifies that the tenant did not pay rent for March, 2011 and the total amount of outstanding rent is now \$1,800.00.

The tenant testifies that she withheld her rent because of mould in her unit which the landlords failed to deal with despite being informed of the mould by the tenant. The tenant states that she does not dispute the amount of rent arrears and did not file an application to cancel the notice as she moved from the rental unit because of the issues with the mould.

The tenant seeks an Order for the landlord to comply with the *Act* with regard to the mould issue.

The landlord testifies that they believe the mould was caused by the tenant as she did not ventilate or heat the bedroom correctly. The landlord testifies that they have been to the unit on different occasions and found no leakage in the roof; they have had the siding company look at the siding and have sprayed the mould in the unit. The landlords' agent testifies that she last went into the unit on March 17, 2011 after the tenant had moved out and found the heat had been turned off, the blinds were stuck to the window with condensation and a

garbage can full of water had been left in the living room as if someone was trying to create moisture in the unit.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. With regards to the tenants application for an Order for the landlord to comply with the *Act*; in this matter I refer both parties to s. 2.3 of the Residential Tenancy Branch Rules of Procedure which states *“if in the course of the Dispute Resolution Proceeding, the Dispute Resolution Officer determines that it is appropriate to do so, the Dispute Resolution Officer may dismiss unrelated disputes contained within a single application with or without leave to reapply.”* as the tenant has left the rental unit I find it is appropriate not to deal with her application for an Order for the landlord to comply with the *Act* as the tenancy has ended. Consequently I dismiss the tenants’ application without leave to reapply.

With regards to the landlords amended application for a Monetary Order to recover unpaid rent. There is no dispute that rent for February and March, 2011 remains unpaid therefore it is my decision that the landlord is entitled to amend their application and are entitled to a Monetary Order to recover the unpaid rent of **\$1,800.00** pursuant to s. 67 of the *Act*.

As the landlord has been successful in this matter I find they are also entitled to recover their **\$50.00** filing fee from the tenant pursuant to s. 72(1) of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlord’s amended monetary claim. A copy of the landlord’s decision will be accompanied by a Monetary Order for **\$1,850.00** comprised of \$1800.00 unpaid rent and \$50.00 filing fee. The order must be served on the tenant and is enforceable through the Provincial Court as an order of that Court.

The tenants’ application is dismissed in its entirety 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 21, 2011.

Residential Tenancy Branch