



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 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, to keep the security and pet deposits, 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, was completed on March 15, 2011, at 3:30 p.m. when the Landlord personally served the hearing packages to the Tenant.

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 for the Tenant despite him being served notice of this hearing in accordance with the Act.

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?

Background and Evidence

The fixed term tenancy commenced on January 1, 2010 and switched to a month to month tenancy after January 1, 2011. The Tenant paid a security deposit in the amount of \$450.00 and a pet deposit of \$450.00 on December 29, 2009. Rent is payable on the first of each month in the amount of \$900.00.

The Landlord testified that when the Tenant failed to pay the March 1, 2011 rent in full a 10 Day Notice to End Tenancy was issued by the Landlord and posted on the Tenant's door on March 2, 2011.

The Landlord advised that since the 10 Day Notice to End Tenancy was issued at late payment charge of \$25.00 for March 2011 was applied to the Tenant's account leaving an outstanding balance due of \$475.00. A payment was received on April 1, 2011 in the amount of \$450.00, which left a balance owing from March of \$25.00. A receipt was issued to the Tenant for "use and occupancy only".

The Landlord advised the Tenant is still occupying the unit so she is seeking the balance due of \$25.00 from March 2011, \$900.00 for April 2011, and a \$25.00 late fee for April as provided in section 12 of their tenancy agreement.

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 Tenants.

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 Tenants failed to pay the rent in full within 5 days after receiving this notice. When rent was received after the set time period a receipt was issued for "use and occupancy only".

In the absence of an application from the Tenant to dispute the Notice, 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*. Based on the aforementioned, I hereby approve the Landlord's request for an Order of Possession.

Claim for unpaid rent. The Landlord claims for unpaid rent for April 2011 however this tenancy ended on the effective date of the 10 Day Notice to End Tenancy which is, March 15, 2011, pursuant to section 44(1)(a)(ii) of the *Act*. The Landlord was able to

receive partial payment for use and occupancy only for March 2011, after the tenancy had been terminated, leaving unpaid rent in the amount of **\$25.00** for March 2011.

Therefore, the Landlord's claim for April 2011 is for loss of rent, as the tenancy has ended and the Tenants continue to occupy or over hold the rental unit which prevents the Landlord from re-renting the unit at this time. Therefore I approve the Landlord's request of **\$900.00** for loss of rent for April 2011, pursuant to section 67 of the Act.

Late Payment Fees. The Landlord is seeking \$25.00 for late payment fees for April 2011 in accordance with section 12 of the tenancy agreement. This tenancy ended March 15, 2011, therefore the Landlord may not make a claim for late payment fees for April 2011, as this tenancy was no longer in effect at that time. Therefore I dismiss the Landlord's claim of \$25.00 for late fees.

Filing Fee \$50.00. The Landlord has primarily been successful with her application therefore I award her the \$50.00 filing fee.

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

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|---|-----------------|
| Unpaid Rent for March 2011 | \$25.00 |
| Loss of rent for April 2011 | 900.00 |
| Recovery of the filing fee | 50.00 |
| Subtotal (Monetary Order in favor of the Landlord) | \$975.00 |
| Less Security Deposit of \$450.00 + Pet Deposit of \$450.00 plus interest of \$0.00 | -900.00 |
| TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD | \$75.00 |

Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenants**. This order must be served on the Tenants and may be filed in the Supreme Court and enforced as an order of that Court.

The Landlord's decision will be accompanied by a Monetary Order for **\$75.00**. This Order must be served on the Respondent Tenant and may be filed with Provincial Court and enforced 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: April 05, 2011.

Residential Tenancy Branch