



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR MNR 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, and to recover the cost of the filing fee from the Tenants for this application.

Service of the hearing documents, by the Landlord to the Tenants, was completed in person at the rental unit. The Tenant confirmed receipt of the hearing documents.

The parties appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present her 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. 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 October 1, 2010 and is set to switch to a month to month tenancy after September 30, 2011. The Tenants paid a security deposit in the amount of \$360.00 on September 22, 2010. Rent is payable on the first of each month in the amount of \$720.00.

The Landlord testified that when the Tenants failed to pay the March 1, 2011 rent a 10 Day Notice to End Tenancy was issued by the Landlord and posted on the Tenants' door on March 2, 2011. A second copy of the 10 Day Notice was served to the Tenants personally.

The Landlord advised that since the 10 Day Notice to End Tenancy was issued the Tenants have made no payments towards their rent. The Tenants are still occupying the rental unit and have not paid anything towards April 2011 rent.

The Tenant testified and confirmed he has not paid his rent for March 2011 or April 2011. He initially stated that he is "sitting on the March rent pending the outcome of this hearing" and later stated that he can get the money together for March 2011 rent in two days. He is waiting for a payment from WCB and will not be able to pay April rent until he receives that payment.

The Landlord advised the Tenants told her at the beginning that she would be paid rent from social assistance and she has never seen money from them. She has had to work to try and collect rent each month. She wishes to proceed with her application for an Order of Possession and a Monetary Order for March and April rent.

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* and the Tenants failed to pay the rent in full within 5 days after receiving this notice.

In the absence of an application to dispute the Notice, the Tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, March 12, 2011, 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 March 2011 in the amount of \$720.00. Section 26 of the *Act* states that a Tenant must pay rent when it is due in accordance with the tenancy agreement. Therefore I find the landlord has met the burden of proof to establish a loss and I hereby approve her request for unpaid rent in the amount of \$720.00.

Loss of Rent. The Landlord requested the monetary order include unpaid rent for April 2011; however this tenancy ended on the effective date of the 10 Day Notice to End Tenancy which is, March 12, 2011, pursuant to section 44(1)(a)(ii) of the *Act*.

Based on the above, I find 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 **\$720.00** for loss of rent for April 2011, pursuant to section 67 of the Act.

Filing Fee \$50.00. The Landlord has 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:

Unpaid Rent for March 2011	\$720.00
Loss of rent for April 2011	720.00
Recovery of the filing fee	50.00
Subtotal (Monetary Order in favor of the Landlord)	\$1,490.00
Less Security Deposit of \$360.00 plus interest of \$0.00	-360.00
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$1,130.00

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 copy of this decision will be accompanied by a Monetary Order in the amount of **\$1,130.00**. This Order may be filed in 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 06, 2011.

Residential Tenancy Branch