



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 Tenant for this application.

Service of the hearing documents, by the Landlord to the Tenant, was completed on March 18, 2011 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 his 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 *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 parties entered into a written tenancy agreement for a month to month tenancy effective February 21, 2011. Rent is payable on the first of each month in the amount of \$1,050.00. The Tenants paid a security deposit of \$525.00.

The Landlord testified that when the Tenants failed to pay the March 1, 2011 rent in full a 10 Day Notice to End Tenancy was issued by the Landlord for \$665.00 of unpaid rent and was posted on the Tenant's door on March 5, 2011.

The Landlord advised that since the 10 Day Notice to End Tenancy was issued the Tenant made payments towards the rent and receipts were issued to the Tenant for "use and occupancy only". March rent was finally paid in full by March 22, 2011. As of today's date the March 2011 rent has been paid in full and \$110.00 is outstanding for April 1, 2011 rent.

The Landlord advised the Tenant is still occupying the unit and he wishes to proceed with his application for an Order of Possession and a Monetary Order.

Analysis

Based on the foregoing, the relevant written submissions, and on a balance of probabilities, I find as follows:

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 Tenant failed to pay the rent in full within 5 days after receiving this notice. When rent was received after the required time period receipts were issued for "use and occupancy only". In the absence of an application to dispute the Notice, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, March 18, 2011 pursuant to section 90 of the *Act*, 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 unpaid rent for April 2011 however this tenancy ended on the effective date of the 10 Day Notice to End Tenancy which was, March 18, 2011, pursuant to section 44(1)(a)(ii) of the *Act*. The Landlord was able to receive payment for use and occupancy only for the remainder of March 2011, after the tenancy had been terminated.

Therefore, the Landlord's claim 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 **\$110.00** for over holding and loss of rent for the remainder of April 2011, pursuant to section 67 of the Act.

Filing Fee \$50.00. The Landlord has been successful with his application therefore I award 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 Tenant's security and pet deposits as follows:

Over Holding charges and loss of rent for April 2011	\$110.00
Recovery of the filing fee	<u>50.00</u>
Subtotal (Monetary Order in favor of the Landlord)	\$160.00
Less Security Deposit of \$525.00 plus interest of \$0.00.	-525.00
TOTAL OFF-SET AMOUNT TO BE HELD IN TRUST BY THE LANDLORD UNTIL THE TENANT VACATES THE PROPERTY	(365.00)

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

The one time monetary award of **\$160.00** is to be withheld from the security deposit held in trust.

The Landlord is hereby ordered to administer the balance of the security deposit of \$365.00 in accordance with section 38 of the Act.

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 07, 2011.

Residential Tenancy Branch