



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD MNDC FF
 CNR MT

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 and a Monetary Order for unpaid rent, to keep all or part of the security and or pet deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, 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 and for more time to make her application to cancel the Notice to End Tenancy.

Service of the original hearing documents by the Landlord to the Tenant was done in accordance with section 89 of the *Act*, sent via registered mail on May 25, 2011. The Tenant is deemed to have been served the hearing documents on May 30, 2011, five days after they were mailed, in accordance with the *Act*.

The Landlord appeared, 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 the Tenant being served with notice of the Landlord's application in accordance with the *Act* and despite having her own application for dispute resolution scheduled for the same hearing date and time.

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 Tenant met the burden of proof to be allowed more time to make her application to dispute the Notice to End Tenancy?
4. If so, has the Tenant met the burden of proof to have the 10 Day Notice to End Tenancy cancelled?

Background and Evidence

The Landlord testified that the parties entered into a written fixed term tenancy agreement which began on June 1, 2009 which switched to a month to month tenancy after May 31, 2010. Rent was originally payable on the first of each month in the amount of \$850.00 however approximately four months into the tenancy the Landlord verbally agreed to reduce the Tenant's rent to \$825.00 per month. On May 21, 2009 the Tenant paid the Landlord \$425.00 as the security deposit.

When the Tenant failed to pay April 2011 and May 2011 rent the Landlord posted a 10 Day Notice to End Tenancy to her door on May 13, 2011 at 2:15 p.m. in the presence of a witness. The Landlord had attempted to expedite this process by applying through the Direct Request process however he could not because the Tenant had filed an application to dispute the Notice.

On approximately June 1, 2011, the Landlord was informed by another tenant in the building that the Tenant had vacated the property. He has since regained possession of the unit so he has withdrawn his request for an Order of Possession. He is seeking to recover the April and May 2011 rent plus rent for June 2011 as the Tenant moved out without notice and left the unit a mess so he has to clean it up before he can re-rent it. He is also seeking to keep the security deposit and recover the cost of his filing fee.

Analysis

I have carefully considered the aforementioned and the evidence which included among other things, a copy of the 10 Day Notice to End Tenancy, a copy of the tenancy agreement, and photographs of the rental unit.

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 Landlord's right to claim damages from the Tenant, 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 - The Landlord has withdrawn his request for an Order of Possession.

Claim for unpaid rent - The Landlord claims for unpaid rent of \$1,650.00 for April 2011 of \$825.00 plus May 2011 of \$825, pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due. I find that the Tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. Therefore I find the Landlord has met the burden of proof and I award him a monetary order in the amount of **\$1,650.00** for unpaid rent.

Loss of rent – The Landlord is seeking loss of rent for June 2011 of \$825.00 as the Landlord was not informed that the Tenant was going to vacate the property. He found out from another tenant on June 1, 2011 that the Tenant had left. The evidence supports that the Landlord has not been able to re-rent the rental unit for June 2011 which resulted in the Landlord suffering a loss as a direct result of the Tenants' failure to comply with section 26 of the *Act*. Based on the aforementioned I find that the Landlord has succeeded in proving his loss, as listed above, and I approve his claim for **\$825.00** for loss of June 2011 rent.

Filing Fee - The Landlord has succeeded with his application; therefore I award recovery of the **\$50.00** filing fee.

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 Tenants' security deposit as follows:

Unpaid Rent for April and May 2011 (2 x \$825.00)	\$1,650.00
Loss of Rent for June 2011q	825.00
Filing fee	<u>50.00</u>
Subtotal (Monetary Order in favor of the Landlord)	\$2,525.00
Less Security Deposit of \$425.00 plus interest of \$0.00	-425.00
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$2,100.00

Tenant's Application

Section 61 of the *Residential Tenancy Act* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the Director must determine if the hearing is to be oral or in writing. In this case, the hearing was scheduled for an oral teleconference hearing.

In the absence of the Applicant Tenant, the telephone line remained open while the phone system was monitored for ten minutes and no one on behalf of the Applicant Tenant called into the hearing during this time. Based on the aforementioned I find that the Tenant has failed to present the merits of her application and the application is dismissed, without leave to reapply.

Conclusion

Landlords' Application

A copy of the Landlords' decision will be accompanied by a Monetary Order for **\$2,100.00**. 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: June 13, 2011.

Residential Tenancy Branch