



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR OPC OPB MNR FF
CNR OLC LRE FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed seeking an Order of Possession for unpaid rent, for Cause, and for breach of an agreement with the landlord; and a Monetary Order for unpaid rent and to recover the cost of the filing fee from the Tenants for this application.

The Tenants filed seeking an Order to cancel the notice to end tenancy for unpaid rent, to obtain an Order to have the Landlord comply with the Act, regulation or tenancy agreement, to suspend or set conditions on the landlord's right to enter the rental unit, and to recover of the cost of the filing fee from the Landlord for this application.

The parties appeared at the teleconference hearing, gave affirmed testimony, confirmed receipt of the hearing documents and evidence served by the other, were provided the opportunity to present their 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. 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 a valid 10 Day Notice to End Tenancy for unpaid rent been issued and served to the Tenants in accordance with the *Residential Tenancy Act*?
4. Have the Tenants met the burden of proof to have the 10 Day Notice set aside or cancelled and reinstate the tenancy?
5. Has the Landlord breached the *Residential Tenancy Act*, regulation or tenancy agreement?
6. If so, have the Tenants met the burden of proof to obtain Orders to have the Landlord comply with the Act and to suspend or set conditions on the Landlord's right to enter the rental unit?

Background and Evidence

I heard undisputed testimony that the parties entered into a written fixed term tenancy agreement that began on March 15, 2010 and was set to expire on March 15, 2011. Both parties testified and confirmed they initialled section 2(b) (ii) of the tenancy agreement that states the tenancy ends and the tenant must move out of the residential unit. Rent was payable on the 15th of each month in the amount of \$1,100.00 and on March 15, 2010 the Tenant paid \$1,000.00 as the security deposit.

The Landlord provided testimony through his Agent that prior to leaving the country on February 28, 2011 he informed the Tenant, in writing, that she was to vacate the rental unit before he returns on April 18, 2011. The Tenant is still occupying the rental unit and has not paid rent for March 15, 2011, April 15, 2011 or May 15, 2011. The Landlord served a 10 Day Notice to End Tenancy on May 18, 2011 which was posted to the Tenant's Door.

The Tenant testified and confirmed a second time that she signed the tenancy agreement and initialled it in section 2 (b) (ii). She states that she was told she could not move out during the first year and that if they stayed the full year they would be considered for another six month tenancy.

She claims she paid rent every month in cash and she was never issued receipts until she received the Landlord's evidence package. She provided proof of her bank statements that she withdrew cash each month however she did not have proof that the money was given to the Landlord. She stated that it is her culture to trust and not to worry about not getting receipts because they trusted each other.

Analysis

I have carefully considered the aforementioned and the documentary evidence which included, among other things, a copy of the tenancy agreement, copies of receipts issued to the Tenant for rent, copies of bank receipts from the Tenant which indicates withdraws of cash.

Landlord's Application

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 tenant.

Order of Possession - I find that the Landlord has met the requirements to obtain an Order of Possession in accordance with section 55(2)(c) of the *Act*, that the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit at the end of the fixed term. Therefore I approve his request for an Order of Possession.

Claim for loss of rent - The Landlord claims for loss of rent of \$3,300.00 for March 15, 2011, April 15, 2011 and May 15, 2011 rent, as the Tenant has over held past the end of the tenancy agreement. The Landlord is entitled to payment for the period the Tenant has occupied the rental property. I find that there is insufficient evidence to support the Tenant paid the Landlord money to occupy the unit after the end of the tenancy, therefore I find in favor of the Landlord's application for loss of rent in the amount of **\$3,300.00**.

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 Tenant's security deposit as follows:

Loss of Rent for March, April, May 2011 (3 x \$1,100.00)	\$3,300.00
Filing fee	50.00
Subtotal (Monetary Order in favor of the Landlord)	\$3,350.00
Less Security Deposit of \$1,000.00 plus interest of \$0.00	-1,000.00
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$2,350.00

Tenant's Application

Having granted the Order of Possession to the Landlord in accordance with Section 55 (2) (c) of the Act and finding above that there is insufficient evidence to support the Tenant paid rent, I find the Tenant's application to cancel the Notice to End Tenancy and request conditions set on the Landlord right to enter to the unit are now moot. Therefore I dismiss the Tenant's application, without leave to reapply.

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

I HEREBY FIND in favor of the Landlord's monetary claim. A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$2,350.00**. The Order must be served on the respondent Tenant and is enforceable through the Provincial Court as an order of that Court.

I HEREBY DISMISS the Tenant's application, 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 14, 2011.

Residential Tenancy Branch