



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC MND MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for Cause and to obtain a Monetary Order for damage to the unit, site, or property, for unpaid rent or utilities, to keep all or part of the pet and or security 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 Tenants for this application.

Service of the hearing documents, by the Landlord to each Tenant, was done in accordance with section 89 of the Act, sent via registered mail on October 28, 2011. Mail receipt numbers were provided in the Landlord's evidence. Based on the submissions of the Landlord I find each Tenant has been sufficiently served notice of this proceeding.

The Landlord appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Has a valid 1 Month Notice to End Tenancy been issued and served to the Tenants in accordance with section 47 of the *Residential Tenancy Act*?
2. Has the Landlord met the burden of proof to obtain a Monetary Order for damage or loss under the Act, regulation or tenancy agreement, pursuant to section 67 of the *Residential Tenancy Act*?

Background and Evidence

The parties entered into a written month to month tenancy agreement that began on June 1, 2009. Rent is payable on the first of each month in the amount of \$960.00 and on June 1, 2009 the Tenants paid \$450.00 as the security deposit.

The Landlord affirmed that a 1 Month Notice to End Tenancy for Cause was issued and posted to the Tenants' door on August 30, 2011 as supported by the copy provided in his evidence. He also referenced a copy of a notice of termination document provided in his evidence. The Landlord stated the Tenant signed this document acknowledging they would be vacating the property as of September 30, 2011; however the Tenants did not vacate and are still occupying the unit.

The Landlord advised the Tenants failed to pay December 2010 rent as noted on their tenant ledger. Each time rent was paid from that date forward it has been applied to the previous outstanding balance. Then sometime during the tenancy the rent began to be paid by the Ministry of Social Development so although their payments reference the current month they get applied to the previous outstanding balance. He confirmed there is still an outstanding balance owing of \$960.00.

The Landlord is seeking \$500.00 for the cost to replace the oven that was damaged by the Tenants. No evidence was provided to prove when a new oven was purchased and at what cost.

A brief discussion followed where by the Landlord acknowledged that his claim for \$300.00 for carpet cleaning, cleaning of the apartment, and withholding the security deposit, was premature as the Tenants have not yet vacated the property and the move-out inspection has not yet been completed.

Analysis

Upon review of the 1 Month Notice to End Tenancy issued August 30, 2011, I find the Notice to be completed in accordance with the requirements of the Act and I find that it was served upon the Tenants in a manner that complies with the Act.

The notice is deemed to have been received by the Tenants on September 2, 2011, three days after it was posted to the Tenants' door, and the effective date of the notice is October 31, 2011, pursuant to section 90 of the *Act*. I accept the evidence before me that the Tenants have not made application to dispute the Notice within the 10 days granted under section 47 (4) of the *Act*.

Based on the foregoing, I find that the Tenant is conclusively presumed under section 47(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice and I hereby grant the Landlord an Order of Possession.

The evidence supports the Tenants failed to pay their December 2010 rent in breach of section 26 of the Act which stipulates a tenant must be rent when it is due in accordance with the tenancy agreement and the Act. Accordingly I award the Landlord **\$960.00** for unpaid rent.

The Landlord has sought \$500.00 as compensation for a damaged stove/oven. In the absence of documentary evidence to support when the stove/oven was replaced and at what cost I find the Landlord has not met the burden of proof and I dismiss his claim of \$500.00 without leave to reapply.

The remainder of the Landlord's claim for damages is premature because at the time the Landlord made this application the Landlord had not regained possession of the unit and a move out inspection report had not been completed. Therefore I dismiss the balance of the Landlord's claim with leave to reapply.

The Landlord has primarily been successful with his application; therefore I award recovery of the **\$50.00** filing fee.

Any deposits currently held in trust by the Landlords are to be administered in accordance with Section 38 of the *Residential Tenancy Act*.

Conclusion

I HEREBY FIND the Landlord is entitled to an Order of Possession effective **two days after service on the Tenants**. This Order is legally binding and must be served upon the Tenants.

A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$1,010.00**. This Order is legally binding and must be served upon the Tenant.

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: November 18, 2011.

Residential Tenancy Branch