



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for unpaid rent and a Monetary Order for unpaid rent or utilities, to keep all or part of pet and or security deposit, and to recover the cost of the filing fee from the Tenants for this application.

The parties 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. 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, pursuant to sections 55 and 67 of the *Residential Tenancy Act*?

Background and Evidence

The parties agreed they entered into a month to month tenancy that began on May 1, 2011. Rent is payable on the first of each month in the amount of \$1,200.00 and the Tenants paid \$600.00 as the security deposit.

The Tenant affirmed they have not paid rent for November or December 2011 and argued that they have requested that the Landlord look at the basement ceiling for what appears to be a water leak from the upstairs bathroom and because he has not done this they have stopped paying rent. She confirmed the Landlord personally served her a 10 Day Notice to End Tenancy in November and pointed out that the notice was not dated. She confirmed she has taken no action since receiving the 10 Day Notice and has not paid rent.

The Landlord affirmed the Notice was personally served to the Tenant on November 17, 2011 and he discussed with her that they had to move if they were not going to pay rent. He denied knowing about any problems about the rental unit and called the Tenant's veracity into question. He is seeking an Order of Possession for as soon as possible, a monetary order and requested to pick up the decision and orders today.

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.

Section 68 (1) of the *Act* provides that if a notice to end a tenancy does not comply with section 52 [*form and content of notice to end tenancy*], the director may amend the notice if satisfied that (a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and (b) in the circumstances, it is reasonable to amend the notice.

Upon review of the 10 Day Notice I note that it is signed but not dated by the Landlord. The parties agree that the Tenant was personally served the 10 Day Notice to End Tenancy in November 2011. I accept that this Notice was served on November 17, 2011 as per the Landlord's evidence and therefore, on a balance of probabilities, it is reasonable to conclude the Notice was created and signed on that date. I further find it is reasonable to conclude the effective day is ten days later, November 27, 2011. Accordingly I amend the Notice pursuant to section 68(1) of the *Act*.

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 Tenants failed to pay the rent within 5 days after receiving this notice, and that the Tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit to which the notice relates pursuant to section 46(5) of the *Act*. Accordingly, I approve the Landlord's request for an Order of Possession.

Claim for unpaid rent - The Landlord claims for the total unpaid rent of \$2,400.00 which consist of rent owed for November and December 2011; pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due.

Based on the aforementioned I find that the Tenants have 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 award the Landlord **\$2,400.00** for unpaid rent.

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 plus interest as follows:

Unpaid Rent (2 x \$1,200.00)	2,400.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$2,450.00
LESS: Security Deposit \$600.00 + Interest 0.00	<u>-600.00</u>
Offset amount due to the Landlord	<u>\$1,850.00</u>

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 **\$1,850.00**. 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: December 21, 2011.

Residential Tenancy Branch