# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with an application by the landlords for an order of possession, a monetary order and an order authorizing them to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing.

At the hearing, the parties confirmed that the tenants had vacated the unit on or about February 9, 2012. As an order of possession is no longer required, I consider that claim to have been withdrawn.

On February 21, 2 days before the hearing, the landlord had submitted evidence to the Residential Tenancy Branch in which she purported to amend her claim. The tenant did not receive a copy of this evidence. The landlord testified that on the same day she sent documents to the Residential Tenancy Branch, she couriered documents to the tenant at the forwarding address he had provided and she was told by the courier that there was no such address. Notwithstanding the issue of whether the tenant had provided a legitimate mailing address, I determined that the landlord had not complied with the Rules of Procedure respecting service of documents and had not served her evidence 5 days prior to the hearing and had deprived the tenant of the opportunity to respond to the claim against him. The evidence submitted on February 21 was not considered and the landlord's claim is not considered to have been amended. The landlord is free to file a claim against the tenant in the future for those damages identified in her February 21 evidence.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began on April 15, 2010 at which time the tenants paid a $325.00 security deposit and that it ended on or about February 9, 2012. The parties further agreed that monthly rent was set at $650.00 at the outset of the tenancy

and was increased in October 2011. The landlord J.A. testified that she had a conversation with the tenants advising them that because they had additional people in the unit and were using a large amount of utilities, they should pay more.

The parties agreed that the tenants gave verbal notice on or about January 22 that they would be vacating the rental unit in mid-February. The tenants did not pay rent for February. The tenant A.A. testified that because he had overpaid rent from October – January, he felt this should be applied to February's rent.

The landlord J.A. testified that the unit was so severely damaged and soiled that it could not be re-rented right away and probably could not be occupied until March 15. She stated that she had not yet begun repairs or cleaning and expected it to take from 15 – 20 days to restore the rental unit to a liveable condition. However, she maintained that she had begun advertising immediately upon receiving the tenants' notice on January 22. The landlord seeks to recover unpaid rent for February and anticipated loss of rental income for March.

The tenants denied that the rental unit was damaged or unclean.

Analysis

The tenants were required under section 52 of the Act to provide written notice of termination. Even if they had provided written notice, a notice could not have taken effect earlier than February 29 as a notice takes effect at the end of a rental period, in this case at the end of the month. I find that the landlords were entitled to receive rent for the full month of February.

Although the landlord claimed that she had reason to increase the tenant's rent, section 43(1) of the Act prevents landlords from increasing rent in an amount beyond what is prescribed under the Regulations unless they have the written consent of the tenants. The more than 15% increase in rent was well beyond the 4.3% permitted by the Regulations and as the landlords did not have the tenants' written consent, I find that the increase was both invalid and unenforceable. I find that the tenants overpaid their rent by $400.00 during the period from October 2011 – January 2012 and were entitled to apply that overpayment to rent for the month of February. As the rent should have been $650.00 for that month, I find that the landlords are still owed $250.00 and I award them that sum.

I dismiss the landlords' claim for loss of income for the month of March. The landlords had the obligation to mitigate their losses and although they claim that they immediately began advertising the unit, they provided no evidence to corroborate that claim and as

they have not begun the repairs which they insist are required, I find that any loss of income for March is attributable to their own failure to mitigate.

I find that the landlords should recover the filing fee paid to bring this application and I award them $50.00.

I note that the landlords indicated that they intend to file an application to claim for damages. At the hearing, the tenant A.A. confirmed that his address for service is *. The landlords may serve a future application on the tenants at this address and because the tenant has confirmed that it is a correct mailing address, even if registered mail is returned because the address does not exist, the tenants will be deemed to have been served.

Conclusion

The landlords are awarded $300.00. I order the landlords to retain this sum from the $325.00 security deposit and to return the balance of $25.00 to the tenants forthwith. I grant the tenants a monetary order under section 67 for $25.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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: February 23, 2012

Residential Tenancy Branch