



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD MNDC 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, to keep 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 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 January 24, 2012. Mail receipt numbers were provided in the Landlord's evidence. Based on the submission of the Landlord I find that each Tenant was sufficiently served notice of this proceeding.

The Landlord and Resident Building Manager appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

No one appeared on behalf of the Tenants despite them being served notice of this hearing in accordance with section 89 of the *Residential Tenancy Act*.

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 Landlord affirmed that they entered into a written month to month tenancy agreement with the male respondent named in this dispute that began on December 9,

2011. Rent is payable on the first of each month in the amount of \$900.00 and on December 9, 2011 the Tenant paid \$450.00 as the security deposit.

The female respondent entered into a separate month to month tenancy agreement that began on December 9, 2011, for rent of \$900.00 due on the first of each month. It is indicated on the female's tenancy agreement that the male Tenant paid the required \$450.00 security deposit.

The Landlord clarified that the total rent due each month was only \$900.00 as she considered the Tenants as being co-tenants who would be jointly and severally liable. She confirmed this is why she made only one application listing both Tenants and why she issued only one 10 Day Notice with both their names listed.

The Landlord advised that when \$400.00 of January 2012 rent remained unpaid she issued a 10 Day Notice to End Tenancy. The Resident Manager affirmed he personally served the female Tenant with this Notice on January 4, 2012 at the rental unit.

The Tenants vacated the property on approximately February 3, 2012, and did not pay the balance owing for January or February rent. The unit has been re-rented as of February 12, 2012 for \$900.00 per month and the new tenant will be paying \$533.00 for a prorated rent for February 2012. The Landlord wishes to claim for the balance of February 2012 rent of \$367.00 plus the unpaid January 2012 rent of \$400.00 for a total amount of \$767.00. The Landlord confirmed she wished to withdraw her request for an Order of Possession as they have regained possession.

Analysis

Upon review of the aforementioned, I accept the Landlord's testimony that the intention of all parties to this tenancy was that the Tenant's had entered into a tenancy agreement where they were co-tenants, jointly and severely liable, and that the total rent payable was \$900.00 per month and not \$1,800.00 per month (\$900.00 from each Tenant).

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.

The Landlord claims for the total unpaid rent of \$767.00 which consist of \$400.00 owed for January 2012 plus the different owed for February 2012 of \$367.00; 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 **\$767.00** for unpaid rent.

The Landlord has succeeded with their 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 plus interest as follows:

Unpaid rent for January & February 2012	\$ 767.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$ 817.00
LESS: Security Deposit \$450.00 + Interest 0.00	<u>-450.00</u>
Offset amount due to the Landlord	<u>\$ 367.00</u>

Conclusion

A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$367.00**. This Order is legally binding and must be served upon the Tenants.

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 10, 2012.

Residential Tenancy Branch