



Dispute Resolution Services

Page: 1

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 seeking an Order of Possession for unpaid rent, a Monetary Order for unpaid rent, to keep the security deposit in partial satisfaction of their claim, for money owed for 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 was done in accordance with section 89 of the *Act*, sent via registered mail to each Tenant on February 8, 2012. The Canada Post tracking numbers were provided in the Landlord's evidence. Based on the written submission of the Landlord I find that each Tenant was sufficiently served notice of this proceeding in accordance with the Act.

The Landlord appeared, gave affirmed testimony, was provided the opportunity to present their evidence orally, in writing, and in documentary form. The Tenants did not appear despite being served notice of this hearing in accordance with the Act.

Issue(s) to be Decided

1. Has the Tenant breached the *Residential Tenancy Act*, Regulation and/or tenancy agreement?
2. If so, have the Landlords met the burden of proof to obtain an Order of Possession and a Monetary Order pursuant to sections 55 and 67 of the *Residential Tenancy Act*?

Background and Evidence

The Agent affirmed the parties entered into a written fixed term tenancy agreement that began on November 15, 2010 and switched to a month to month tenancy after May 31, 2011. Rent is payable on the first of each month in the amount of \$715.07 and the Tenants paid \$349.50 as the security deposit.

When the Tenant failed to pay January 1, 2012 and then February 1, 2012 rents 10 Day Notices were issued and served to the Tenants on January 6, 2012 and February 3, 2012 respectively. Both Notices were posted to the Tenants' door and the February Notice was for the accumulated unpaid rent of \$1,437.21 which is comprised of \$7.07 from a previous balance owing, \$715.07 for January 2012 plus \$715.07 for February 2012 rent.

The Landlord advised they have been working with the Tenants to continue this tenancy and on February 10, 2012 the Tenants paid \$1,398.00 towards the outstanding rent. Landlord stated she wished to withdraw their request for an Order of Possession and to keep the security deposit as they have agreed to continue this tenancy. They wish to proceed with a monetary order of \$89.21 which includes the balance due of rent of \$39.21 plus the \$50.00 filing fee.

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.

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.

The Landlord claims for the balance of unpaid February 2012 rent of \$39.21, pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due. 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. Based on the aforementioned I find the Landlord has met the burden of proof and I award them a monetary claim of **\$39.21** for unpaid rent.

The Landlord has had to make this application for dispute resolution due to the Tenants' breach of section 26 of the *Act*, as noted above, and as a direct result had to incur a loss of \$50.00 for the cost to file this application. Accordingly I award recovery of the **\$50.00** filing fee.

Conclusion

The Landlord's decision will be accompanied by a Monetary Order for **\$89.21**. 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 22, 2012.

Residential Tenancy Branch