



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR OPC MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords to obtain an Order of Possession for unpaid rent and for cause; and to obtain a Monetary Order for unpaid rent, to keep the 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 Tenant for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. During the hearing each party was given the opportunity to provide their evidence orally and respond to each other's testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

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 Tenant for this application.

The parties appeared at the teleconference hearing and gave affirmed testimony. During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Has the Tenant 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 that on April 4, 2012 the parties entered into a written month to month tenancy agreement that began on March 1, 2012. Rent is payable on the first of each month in the amount of \$850.00 and on March 1, 2012, the Tenant paid \$425.00 as the security deposit.

The Landlords affirmed that the Tenant vacated the property after being served the 1 Month and 10 Day Notices to end tenancy and he returned the keys on April 23, 2012, in the presence of a witness, their neighbor. A walk through inspection was conducted with the Tenant on April 23, 2012 but no report was completed or given to the Tenant.

The Tenant affirmed he vacated the property and returned the keys on April 15, 2012. He also confirmed he did not pay for April 2012 rent because he was issued the 1 Month Notice on March 30, 2012 and the 10 Day Notice on April 13, 2012.

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.

I find that the Landlords have met the requirements for the 10 day notice to end tenancy pursuant to section 46(1) of the *Act*, that the Tenant failed to pay the rent within 5 days after receiving this notice, and that the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, **April 23, 2012**.

The Tenant has vacated the property either on April 15th or April 23, 2012 and the Landlords have withdrawn their requests for Orders of Possession as they have regained possession of the unit.

Claim for unpaid rent - The Landlord claims for unpaid rent of \$850.00 for April 2012. Pursuant to section 26 of the *Act* a tenant must pay rent when it is due in accordance with the tenancy agreement.

Based on the aforementioned, I find that the Tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. Although the date the Tenant vacated the property is in dispute, I find this tenancy ended due to the Tenant's breach of section 26 of the *Act*. I further

find the Landlords have met the burden of proof to be entitled to rent up to the date the Tenant vacated the property **plus** loss of rent for the remainder of the month of April 2012 because the Landlords have not been able to re-rent the unit for the remainder of the month. Accordingly I award the Landlords a monetary claim of **\$850.00** for unpaid rent and loss of rent for the month of April 2012. .

The Landlords have succeeded with their application; therefore I award recovery of the **\$50.00** filing fee.

Monetary Order – I find that the Landlords are 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 and Loss of Rent for April 2012	\$ 850.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$ 900.00
LESS: Security Deposit \$425.00 + Interest 0.00	<u>-425.00</u>
Offset amount due to the Landlord	<u>\$ 475.00</u>

Conclusion

A copy of the Landlords' decision will be accompanied by a Monetary Order for **\$475.00**. 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: May 10, 2012.

Residential Tenancy Branch