

DECISION

Dispute Codes

For the tenant – CNR, OLC

For the landlord – OPR, OPB, MND, MNR, MNSD, FF

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlord. Both files were heard together. The tenant seeks to cancel the 10 Day Notice to End Tenancy for unpaid rent issued on May 03, 2010 and seeks an Order for the landlord to comply with the *Residential Tenancy Act (Act)*. The landlord seeks an Order of Possession for unpaid rent and because the tenant has breached an agreement with the landlord. The landlord also seeks a Monetary Order to recover unpaid rent, for damages to the rental unit, site or property. The landlord also seeks an Order to keep the security deposit and recover the filing fee.

I find that both parties were properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Is the tenant entitled to cancel the 10 Day Notice to End Tenancy?
- Is the tenant entitled to an Order for the landlord to comply with the Act?
- Is the landlord entitled to an Order of possession?
- Is the landlord entitled to a Monetary Order to recover unpaid rent?
- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?

- Is the landlord entitled to keep the security deposit?

Background and Evidence

Both Parties agree that this tenancy started on December 01, 2007. This was a fixed term tenancy which reverted to a month to month tenancy at the end of the fixed term. Rent for this unit is \$1,150.00 per month and is due on the last of each month in advance. The tenant paid a security deposit of \$575.00 on December 07, 2007.

The landlords application

The landlord testifies that the tenant rented this unit and originally had two other tenants sharing the unit with the landlords' permission. After these tenants moved out this tenant asked the landlord if another person could move into the unit and wanted the landlord to sign an Intent to rent form for this tenant to take to welfare to get his rent paid. The landlord said he refused to allow this tenant to move in as he could not do reference checks on him and was worried about signing this form so the tenants could get welfare payments as he felt it was an illegal action.

The landlord claims the tenant did not pay all his rent on the day it was due for May, 2010. The tenant has a balance of rent outstanding of \$375.00. The landlord served the tenant with a 10 Day Notice to End Tenancy for unpaid rent on May 03, 2010. On May 31, 2010. The tenant did not pay all his rent for June, 2010. The tenant had another outstanding balance of \$375.00. The landlord served the tenant with another 10 Day Notice to End Tenancy on June 03, 2010. The landlord seeks an Order of Possession due to unpaid rent of \$750.00.

The landlord testifies that the tenant has breached an agreement with the landlord. The tenant has allowed additional tenants to live at the unit without the landlords permission and the tenancy agreement is for named persons only to live at the unit. The tenant has also kept one or more cats at the unit without the landlords written permission when the tenancy agreement states no pets allowed. The landlord also claims the tenancy agreement states the tenant is responsible for the yard care including keeping the lawn, flower beds and shrubbery in good order and condition. The landlord states the tenant has failed to do this work

The landlord testifies that the tenant operates a business from the rental unit without the landlords' permission and without a valid business license. The landlord also claims the tenant refuses the landlord entry to the unit for inspection despite 24 hours written notice.

The landlord seeks a Monetary Order for damage to the property. The landlord states he has sent the tenant letters requesting him to clear up the outside area of the property which is littered with approximately 41 paint tubs, car batteries, chest freezer, car body parts, piles of wood and general junk and waste. The landlord states he had a notice from the city informing him he was in breach of city bylaws because of the state of the yard at the property. The landlord claims he cut the shrubbery back himself. This took him 28 hours at \$15.00 per hour to a sum of \$420.00. The landlord wants the tenant to remove all his belongings and junk from the property.

The tenant testifies that when he first moved into the unit he was allowed to have roommates and told the landlord that he would be subletting the rooms as it was a four bedroom house.. The tenant claims the landlord did allow him to sublet to some other tenants but refused to allow him to sublet to this tenant because he was on welfare. The tenant admits that this person has moved into the rental unit and other persons have also lived there without the landlords consent.

The tenant does not dispute that he owes rent to the landlord for the balance of May and June, 2010 to the sum of \$750.00.

The tenant states he does operate a business from the rental unit and admits that the yard does get cluttered at times. The tenant states that he does intend to clear the yard up and has already started this work. The tenant claims he only agreed to cut the grass at the start of the tenancy and cannot spare the time to cut the shrubbery. The tenant claims the pile of wood was put there by the neighbour.

The tenant admits he does have a cat and states he will ensure any damage caused by the cat to the door frame will be rectified.

The tenants' application

The tenant has applied to cancel the Notice to End Tenancy for unpaid rent issued on May 03, 2010. The tenant has not applied to cancel the Notice to End tenancy for unpaid rent issued on June 03, 2010 or the One Month Notice issued on May 27, 2010 for cause.

The tenant agreed during the hearing that he will move from the rental unit on June 30, 2010. The tenant also agrees that the landlord can keep his security deposit of \$575.00. The tenant agrees to repair any damage caused to the rental unit at the end of the tenancy.

The tenant states the landlord has never provided the tenant with his service address and the tenant seeks an Order for the landlord to comply with the *Act* and provide his address to the tenant.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. With regards to the landlords application; I find the landlord has established his claim for unpaid rent for May and June, 2010 to a total amount of **\$750.00**. Consequently, I find the landlord is entitled to a Monetary Order to recover this amount pursuant to s. 67 of the *Act*. I order the landlord pursuant to s. 38(4)(b) of the *Act* to keep the tenant's security deposit of \$575.00 and accrued interest of \$9.23 in partial payment of the rent arrears.

I accept that the tenant was served two 10 Day Notices to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notices state that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the outstanding rent within five days but did apply to dispute one of the 10 day Notices issued on May 03, 2010 within the five days.

The tenant did not dispute the second 10 Day Notice issued on June 03, 2010 or the One Month Notice to End Tenancy for cause issued on May 27, 2010

Based on the foregoing, I find that the tenant is conclusively presumed, under section 46(5) and 47 (5) of the *Act*, to have accepted that the tenancy ended on the effective date of either Notice and grant the landlord an order of possession pursuant to section 55 of the *Act*.

With regard to the landlords application for a Monetary Order for damage to the rental unit, site or property; the landlord has provided sufficient evidence that the tenant has not complied with the tenancy agreement in keeping the yard in good order and condition. Due to this the landlord has had to undertake some of the yard work himself to keep the rental unit, site and property in a reasonable state of repair. I find the amount charged by the landlord is reasonable with regard to the amount of work carried out. Consequently, I find the landlord has established his claim for a Monetary Order for **\$420.00** for damage to the property pursuant to section 67 of the *Act*.

As the landlord has been successful with his claim I find he is entitled to recover the **\$50.00** filing fee from the tenant pursuant to section 72(1) of the *Act*. A Monetary Order has been issued for the following amount:

Unpaid rent	\$750.00
Filing fee	\$50.00
Subtotal	\$1,220.00
Less security deposit and accrued interest	\$584.23
Total amount due to the landlord	\$635.77

With regard to the tenants application to cancel the 10 day Notice to End tenancy has no merit and the Notice is upheld. Consequently this section of the tenants' application is dismissed.

With regard to the tenants' application to Order the landlord to comply with the Act, I find the landlord has provided his service address on his application for Dispute Resolution and No further Orders are required and this section of the tenants application is dismissed.

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$635.77**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days** after service on the tenant. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

The tenants' application is dismissed in its entirety without leave to reapply.

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: June 24, 2010.

Dispute Resolution Officer