



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR MND MNSD MNDC FF

Preliminary Issues

The Landlord confirmed she has not repaired the damage to door of the unit and after conducting the recent inspection she is aware that there are other damages to the unit. She confirmed she wished to withdraw her request for a monetary claim for damage to the unit as she will proceed with those items in a future claim.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for unpaid rent, a Monetary Order for unpaid rent, for money owed for damage or loss under the Act, to keep the security deposit and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents was done in accordance with section 89 of the *Act*, served personally by the Landlord to the Tenant at the rental unit on December 31, 2010 in the presence of the Landlord's witness.

The Landlord, her Agent, and her witness appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form. No one attended the hearing on behalf of the Tenant, despite him being served notice of the hearing in accordance with the Residential Tenancy Act (Act).

Issue(s) to be Decided

1. Has the Tenant breached the *Residential Tenancy Act*, regulation, or tenancy agreement?
2. If so, has the Landlord proven entitlement to an Order of Possession and a Monetary Order as a result of that breach?

Background and Evidence

The parties entered into a written fixed term tenancy agreement effective October 1, 2009 that switched to a month to month tenancy after October 1, 2010. Rent is payable on the first of each month in the amount of \$975.00 and the Tenant paid \$500.00 as a security deposit on September 11, 2009.

The witness testified that she was present when her daughter, the Landlord, served the Tenant with the hearing package and her evidence, in person on December 31, 2010. She was also present when another document was served in person and again when an envelope was posted to the Tenant's door on December 21, 2010.

The Landlord testified that when the Tenant failed to pay his December 1, 2010 rent a 10 Day Notice to End Tenancy was posted to his door on December 21, 2010. At this point the Tenant is still occupying the unit and has failed to pay December 1, 2010 and January 1, 2011 rent so the current arrears are \$1,950.00. The Landlord is seeking an Order of possession and a Monetary Order for the unpaid rent plus late fees. The Landlord could not explain why #2 of the tenancy agreement for arrears, provided in her evidence, had scratched out late payment fees etc. with \$20.00 written above followed by two triangles. She could not explain what this meant.

The Agent confirmed that he was with the Landlord at the rental unit on December 23, 2010, when they told the Tenant what was in the envelope that was posted on his door December 21, 2010. He stated that the Tenant received the envelope from his bedroom and opened the 10 Day Notice in front of them.

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 Tenants.

Order of Possession. I find that the Landlord has 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 in full or make application to dispute the Notice 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 and must vacate the rental unit to which the notice relates pursuant to section 46(5) of the *Act*. Therefore I approve the Landlord's request for an Order of Possession.

Late Payment Fees. The Landlord is seeking \$20.00 for late payment fees for December 2010 pursuant to section 7 of the Residential Tenancy Regulation which states such fees must be provided for in the tenancy agreement. Section 6 of the *Act* states that a term of a tenancy agreement is not enforceable if the term is not expressed in a manner that clearly communicates the rights or obligations under it. Based on the aforementioned I find that #2 of this tenancy agreement has been amended and the intention of this section is no longer clear; therefore I find it is not enforceable. Based on the aforementioned I dismiss the Landlord's claim for late payment fees, without leave to reapply.

Filing Fee \$50.00. The Landlord has been primarily successful with her application; therefore I award recovery of the filing fee.

Monetary Order – I find that the Landlord is entitled to a monetary claim and this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit as follows:

Unpaid Rent for December 2010 and January 2011 (2 x \$975)	\$1,950.00
Recovery of the filing fee	50.00
Subtotal (Monetary Order in favor of the Landlord)	\$2,000.00
Less Security Deposit of \$500.00 plus interest of \$0.00	-500.00
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$1,500.00

Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenant**. This order must be served on the Tenant and may be filed in the Supreme Court and enforced as an order of that Court.

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 \$1,500.00. The order must be

served on the Tenant and is enforceable through the Provincial Court 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: January 26, 2011.

Residential Tenancy Branch