



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

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, a Monetary Order for unpaid rent, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to keep the security and pet deposits, and to recover the cost of the filing fee from the Tenants for this application.

Service of the hearing documents, by the Landlord to the Tenants, were completed on March 15, 2011 when the Landlord personally served both hearing packages to the male Tenant.

The Landlord appeared at the teleconference hearing, gave affirmed testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Have the Tenants breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. Has the Landlord met the burden of proof to obtain an Order of Possession and a Monetary Order as a result of that breach?

Background and Evidence

At the outset of the hearing the Landlord confirmed the male Tenant signs his name with the name listed in her application but that he listed his first name differently on the tenancy agreement. She confirmed she would like the style of cause to include both first names.

The fixed term tenancy commenced on August 1, 2010 and is set to expire on July 31, 2011. The Tenants paid a security deposit in the amount of \$425.00 on August 15,

2010 and a pet deposit of \$425.00 on September 26, 2010. Rent is payable on the first of each month in the amount of \$850.00.

The Landlord testified that when the Tenants failed to pay the March 1, 2011 rent a 10 Day Notice to End Tenancy was issued by the Landlord and posted on the Tenants' door on March 2, 2011.

The Landlord advised that since the 10 Day Notice to End Tenancy was issued the Tenants made payments towards their rent and receipts were issued to the Tenants for "use and occupancy only" as follows: March 20, 2011 for \$700.00 and March 26, 2011 for \$225.00. This left a credit of \$50.00 on the Tenant's account.

The Landlord advised the Tenants are still occupying the unit and the current arrears total \$800.00 and is comprised of the \$850.00 April 1, 2011 rent less the \$50.00 credit balance. The Landlord is seeking the \$25.00 late fee for April as provided in section 12 of their tenancy agreement.

Analysis

The Landlord has applied for a monetary Order which requires that the Landlord serve each respondent as set out under section 89(1). In this case only one of the two Tenants has been personally served with the Notice of a Dispute Resolution Hearing documents. Therefore, I find that the request for a monetary Order against both Tenants must be amended to include only the male Tenant who has been properly served with Notice of this Proceeding. As the second Tenant has not been properly served the Application for Dispute Resolution as required by section 89(1) of the Act the monetary claim against the female Tenant is dismissed without leave to reapply.

The Landlord has requested an Order of possession against both Tenants. Section 89(2) of the Act determines that the Landlord may leave a copy of the Application for Dispute Resolution related to a request for an Order of possession at the Tenant's residence with an adult who apparently resides with the Tenant. As both Tenants are signatories to the tenancy agreement I have determined that both parties have been sufficiently served with the portion of the Application for Dispute Resolution relating to section 55 of the Act, requesting an order of possession.

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 Tenants failed to pay the rent in full within 5 days after receiving this notice. When rent was received after the time period receipts were issued for “use and occupancy only”. In the absence of an application the dispute the Notice, the Tenants are 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*.

Claim for unpaid rent. The Landlord claims for unpaid rent for April 2011 however this tenancy ended on the effective date of the 10 Day Notice to End Tenancy which is, March 15, 2011, pursuant to section 44(1)(a)(ii) of the *Act*. The Landlord was able to receive payment for use and occupancy only for the remainder of March 2011, after the tenancy had been terminated.

Therefore, the Landlord’s claim is for loss of rent, as the tenancy has ended and the Tenants continue to occupy or over hold the rental unit which prevents the Landlord from re-renting the unit at this time. Therefore I approve the Landlord’s request of **\$800.00** for loss of rent for April 2011 against the male Tenant, pursuant to section 67 of the *Act*.

Late Payment Fees. The Landlord is seeking \$25.00 for late payment fees for April 2011 in accordance with section 12 of the tenancy agreement. This tenancy ended March 15, 2011, therefore the Landlord may not make a claim for late payment fees for April 2011, as this tenancy was no longer in effect at that time. Therefore I dismiss the Landlord’s claim of \$25.00 for late fees.

Filing Fee \$50.00. The Landlord has primarily been successful with her application therefore I award her the \$50.00 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 Tenants’ security and pet deposits as follows:

Loss of rent for April 2011	\$800.00
Recovery of the filing fee	<u>50.00</u>
Subtotal (Monetary Order in favor of the Landlord)	\$850.00
Less Security Deposit of \$425.00 + Pet Deposit of \$425.00 plus interest of \$0.00	-850.00
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	NIL

Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenants**. This order must be served on the Tenants and may be filed in the Supreme Court and enforced 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: April 04, 2011.

Residential Tenancy Branch