



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR MNR
CNR MNDC OLC RP RR FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord applied to obtain an Order of Possession for unpaid rent and a Monetary Order for unpaid rent.

The Tenant applied to Cancel a Notice to end tenancy for unpaid rent, to obtain a monetary order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement, to obtain orders to have the landlord comply with the Act,, make repairs to the rental unit, to allow the tenant reduced rent for repairs, services or facilities agreed upon but not provided, and to recover the cost of the filing fee from the Landlord for this application.

The parties appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

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*?
3. Has the Tenant served the Landlord with copies of his application for dispute resolution?

Background and Evidence

The Landlord affirmed that he was not served a copy of the Tenant's application for dispute resolution.

The Tenant confirmed he made no effort to serve the Landlord with his application as there was no need to proceed with his application. He confirmed he vacated the rental unit sometime mid November 2011, that he has not returned the keys and he has not paid November 2011 rent as he felt the unit was unsafe to live in.

The Landlord stated that he will be changing the locks on the rental unit and the Tenant is not required to return the keys to him. He is seeking an Order of Possession effective immediately and a monetary order for November 2011 rent of \$2,400.00.

Analysis

Landlord's application

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.

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 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*. The Tenant has vacated the unit and I approve the Landlord's request for an Order of Possession effective immediately.

Claim for unpaid rent - The Landlord claims unpaid November 2011 rent of \$2,400.00, pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due.

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. Therefore I award the Landlord **\$2,400.00** for unpaid rent.

Monetary Order – I find that the Landlord is 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 for November 2011	\$2,400.00
LESS: Security Deposit \$1,200.00 + Interest 0.00	<u>-1,200.00</u>
Offset amount due to the Landlord	<u>\$ 1,200.00</u>

Tenant's application

The Tenant made application for dispute resolution against the Landlord and stated today that he felt there was no use in proceeding with his application so he did not bother serving it upon the Landlord.

Section 59(3) of the *Residential Tenancy Act* (the Act) stipulates that notices of dispute resolution must be served to the respondent(s) within 3 days of filing the application. Therefore, as the Tenant has not served the Landlord with copies of his application, I dismiss the Tenant's application.

Conclusion

I HEREBY FIND the Landlord is entitled to an Order of Possession effective **immediately**. This Order is legally binding and must be served upon the Tenant.

A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$1,200.00**. This Order is legally binding and must be served upon the Tenant.

I HEREBY DISMISS the Tenant's application.

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: December 01, 2011.

Residential Tenancy Branch