

Decision

Dispute Codes:

OPR MNR FF

Introduction

This was a reconvened hearing which dealt with an Application for Dispute Resolution by the landlord seeking an Order for Possession and a Monetary Order for unpaid rent, and recovery of the filing fee. The landlord originally applied through the direct request process which, upon review, was scheduled for a conference call hearing in accordance with section 74 of the *Residential Tenancy Act*.

Service of the conference call hearing documents was done in person on March 16, 2009, when the landlord hand delivered the Notice of a Dispute Resolution Hearing to the tenant at the rental unit.

The landlord appeared, gave affirmed testimony, was provided the opportunity to present his evidence orally, in written and documentary form, and make submissions to me.

The tenant did not attend the hearing despite being served the hearing documents on March 16, 2009.

Issue(s) to be Decided

The issues to be decided based on the testimony and the evidence are:

- Whether the landlord is entitled to an Order of Possession pursuant to Section 55 of the *Residential Tenancy Act*
- Whether the landlord is entitled to monetary compensation under Section 67 of the *Act* for unpaid rent or utilities

- Whether the landlord is entitled to monetary compensation under section 72(1) of the *Act* to recover filing fee from the tenant for the cost of this application.

Background and Evidence

The tenancy was a six month fixed term tenancy commencing May 1, 2008 and expiring on October 31, 2008, at which time it converted to a month to month tenancy. The rent is \$580.00 per month and the tenant paid a security deposit of \$290.00 on April 21, 2008.

The landlord provided verbal testimony stating that he delivered the hearing documents by hand to the tenant on March 16, 2009 at the rental unit, the same day he received them which meets the service requirements pursuant to section 89 of the *Act*.

The landlord testified that the tenant paid February 2009 rent on February 3, 2009 with a cheque which was returned NSF. A 10 Day Notice to End Tenancy for Unpaid Rent was issued February 10, 2009. The two pages of the 10 Day Notice were hand delivered by the landlord, to the tenant, at the rental unit, on February 10, 2009.

The tenant did not pay the rent or apply to dispute the Notice to End Tenancy within five days. I accept that the tenant has been served with notice to end tenancy on February 10, 2009. The landlord is seeking an Order of Possession.

The landlord advised that the tenant has paid February and March, 2009 rent as follows:

- February 25, 2009 the tenant paid \$290.00 cash towards February rent. A receipt was issued stating the payment was for "use and occupancy only".
- February 28, 2009 the tenant paid \$290.00 cash towards February rent. A receipt was issued stating rent was paid for February 2009.

- March 2, 2009 the tenant paid \$290.00 cash towards March rent. A receipt was issued stating the payment was for “use and occupancy only.”
- March 13, 2009 the tenant issued a cheque for \$290.00 for the balance of March rent. The landlord took the cheque to the bank on March 13, 2009 but was told it was not negotiable. The landlord returned to the bank on March 16, 2009 and told the funds were available so the landlord paid \$12.00 to certify the cheque.

The landlord is submitting a monetary claim to recover the cost of the filing fee and the fee to certify the cheque issued on March 13, 2009.

Analysis

Order of Possession - I allow the landlord's testimony that he served both pages of the 10 Day Notice to End Tenancy for Unpaid Rent by hand delivering it to the tenant, at the rental unit, on February 10, 2009. I find in favor of the landlord, as the tenant did not pay the rent or apply to dispute the Notice to End Tenancy within five days, and grant the Order of Possession, pursuant to Section 46 (1) of the *Residential Tenancy Act*.

Unpaid Rent – The landlord has withdrawn his claim for unpaid rent as the rent has now been paid in full for February and March, 2009.

Cheque Certification Fee - \$12.00 The landlord is claiming a fee which is not documented on his application, which occurred after his application for dispute resolution, and without documentary evidence. I dismiss the landlords claim pursuant to Section 62(4) of the *Residential Tenancy Act*.

Filing Fee - \$50.00 I find that the landlord has succeeded in large and that he should recover the filing fee from the tenant pursuant to section 72(1) of the *Act*.

Conclusion

The landlord has withdrawn his monetary claim for unpaid rent.

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.

I hereby grant the landlord a Monetary Order under sections 67 and 72(1) of the *Residential Tenancy Act* of \$50.00. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The landlord's copy of this decision is accompanied by the Order of Possession and the Monetary Order. Both Orders must be served on the respondent.

March 27, 2009
Date of Decision

Dispute Resolution Officer