

## Decision

### Dispute Codes:

**OPR MNR MNSD FF**

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord seeking an Order for Possession and a Monetary Order for unpaid rent, money owed or compensation for damage or loss under the *Act*, and recovery of the filing fee.

The property manager represented the owners during this hearing and is referred to as the landlord in this decision.

Service of the hearing documents was done by the landlord at the rental unit. The tenant does not dispute receiving notice of this hearing on March 13, 2009.

Representatives appeared for both the applicant and respondent who gave affirmed testimony, were provided the opportunity to present evidence orally, in written and documentary form, and make submissions to me.

### 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 67 of the *Act* for money owed or compensation for damage or loss under the *Act*

- 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 began as a fixed term commencing September 7, 2006 expiring on August 31, 2007. The term has been extended three times with expiry dates of August 31, 2008, September 30, 2008, and the most recent extension dated September 8, 2008, continuing the fixed term to September 30, 2009, with an option to extend to September 30, 2010. The tenancy agreement did not lapse during the previous extension periods.

The landlord provided verbal testimony stating that he hand delivered the hearing documents to the tenant at the rental unit. The landlord was indecisive on how the hearing documents were served. The landlord testified that he thought the hearing documents may have been handed to the tenant's daughter at the rental unit. When asked directly how these documents were served the landlord advised that he thought the 10 Notice to End Tenancy was posted on the door on approximately March 2, 2009 and the hearing documents were handed to the tenant's daughter, he thought, on the day he received them, on or about March 12, 2009.

The tenant is not disputing receiving the notice of the Dispute Resolution Hearing, however he did state that the landlord posted these documents on the door of the rental unit and did not hand deliver them to the tenant or his daughter.

The tenant testified that the landlord knocked on the door of the rental unit and handed the 10 Day Notice to End Tenancy to his 13 year old daughter at approximately 5:30 pm on March 2, 2009. The tenant stated that he returned home ½ hour later to find his daughter upset as she had read the notice about being evicted as the notice was not in an envelope. The tenant testified that an adult was not at home when the 10 Day

Notice was served, that only his two daughters were home as his 13 year old daughter was looking after his 8 year old daughter at the time.

The landlord testified that he could not be sure of which document was which, that he knows he handed one document to the daughter and posted the other on the door. When asked if the document that he handed to the tenant's daughter was in an envelope or not, the landlord stated that he thought it was in an envelope.

The landlord testified that the tenant paid February 2009 rent by cheque, which was returned from the bank which resulted in a \$25.00 returned cheque fee being added to the tenant's rental account. The landlord stated that the tenant failed to pay rent for March 2009 and the 10 Day Notice to End Tenancy was issued March 2, 2009. The landlord stated that the tenant made a payment on March 16, 2009 of \$2,000.00 which brings the arrears to \$9,025.00.

The landlord is seeking an Order of Possession for unpaid rent and a monetary claim for February, March and April 2009 rent and \$25.00 returned cheque fee for February 2009.

The tenant is not disputing the facts that he owes \$9, 025.00 for rental arrears for February and March 2009 and testified that he will not be able to pay the arrears and April 2009 rent by April 1, 2009.

### Analysis

**Order of Possession** – The onus lies with the landlord to prove that service of documents was done in accordance with sections 88 and/or 89 of the *Residential Tenancy Act*. After consideration of the testimony provided by both the applicant and respondent I find the credibility of the landlord's testimony difficult to assess and in the absence of documentary evidence proving service was effected pursuant to section 88

of the *Act*, I find in favor of the tenant and dismiss the landlord's application for an Order of Possession without leave to reapply based on the March 2, 2009, 10 Day Notice.

**Keep all or part of the damage deposit** - Pursuant to Section 38 (4) of the *Residential Tenancy Act*, a landlord can request to keep all or part of the damage deposit only when the tenancy has ended. I dismiss the landlord's request to keep the security deposit as the application for an Order of Possession was dismissed so the tenancy has not ended.

**Unpaid rent - \$14,500.00.** The landlord is claiming for unpaid rent of \$3,500 for February, \$5,500.00 for March and \$5,500.00 for April 2009 for a total of \$14,500.00. The tenant testified that he does not dispute the unpaid rent and that he will not be able to pay the rental arrears and April 2009 rent by April 1, 2009. I find in favor of the landlord and grant the monetary claim of \$14,500.00.

**Returned cheque fee - \$25.00.** The landlord is claiming a \$25.00 returned cheque fee as the tenant's February 2009 cheque was not honored by the bank. I find in favor of the landlord's claim for \$25.00 pursuant to section 7 of the *Residential Tenancy Regulations*.

**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*.

I find that the landlord is entitled to a Monetary Order, including recovery from the tenant of the filing fee for this proceeding as follows:

Unpaid Rent (February, March, April 2009)	\$14,500.00
Returned Cheque Fee	25.00
Filing fee	<u>50.00</u>
<b>TOTAL AMOUNT DUE TO THE LANDLORD</b>	<b>\$14,575.00</b>

### Conclusion

I hereby dismiss this application for an Order of Possession, without leave to reapply.

I hereby dismiss this application to keep all or part of the tenant's security deposit.

I hereby grant the landlord a Monetary Order under sections 67 and 72(1) of the *Residential Tenancy Act* of \$14,575.00. 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 Monetary Order. The order must be served on the respondent.

March 27, 2009  
Date of Decision

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Dispute Resolution Officer