



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

MNR

OPR

MNSD

FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on the Notice to End Tenancy for Unpaid Rent dated February 11, 2009, a monetary order for rent owed and an order to retain the security deposit in partial satisfaction of the claim.

Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail signed for on February 28, 2009, the tenant did not appear.

Issue(s) to be Decided

The landlord is seeking an Order of Possession and a monetary order claiming unpaid rent of \$1,395.00 each month for January 2009, February 2009 and March 2009 as well as bank charges of \$25.00 each for four returned cheques and liquidated damages under the tenancy agreement of \$1,000.00. In addition to the above, the landlord has submitted a claim for compensation for carpet replacement in the estimated amount of \$4,719.54.

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

Whether or not the landlord is entitled to an Order of Possession based on the 10-Day Notice to End Tenancy for Unpaid Rent.

Whether or not the landlord is entitled to monetary compensation for rental arrears owed or loss of rent totaling \$4,185.00.

Whether or not the landlord is entitled to NSF fees of \$100.00 for four incidents.

Whether the landlord is entitled to retain the security deposit of \$695.00, plus interest, to set off monies owed.

Whether the landlord is entitled to compensation for damaged carpeting in the amount of \$4,719.54 plus GST.

Background and Evidence

The landlord submitted into evidence a copies of two 10-Day Notices to End Tenancy dated February 11, 2009 and March 6, 2009 with effective dates of February 21, 2009 and March 26, 2009, a copy of the resident ledger, a copy of the tenancy agreement, a copy of a move-in inspection report and interim inspection report and proof of service. The landlord testified that the tenancy began on December 11, 2008, as a fixed term tenancy set to end on August 31, 2009, and the tenant paid a security deposit of \$695.00. The landlord testified that the tenant paid the deposit and pro-rated amount for rent for December but never paid naything since that time. The landlord stated that the tenant issued cheques for rent that failed to clear for January, February and March 2009 for rental arrears totaling \$4,185.00 which the landlord is claiming. The landlord testified that under the tenancy agreement, the tenant also owes \$100.00 bank fees for the four NSF cheques and liquidated damages of \$1,000.00. The landlord testified that the tenant has not vacated the unit and the landlord has requested an Order of Possession. The landlord is also hopeful of receiving a monetary order for damages to the carpets, which were newly installed prior to this tenancy. The landlord testified that an interim inspection of the premises

revealed that the carpets were burned due to the fireplace and cigarette burns and the written estimate for replacement submitted into evidence shows that the repair cost would be \$4,719.54, plus GST.

Analysis

Based on the testimony of the landlord, I find that the tenant was served with a Notice to End Tenancy for Unpaid Rent by posting it on the door. The tenant has not paid the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice. Based on the above facts I find that the landlord is entitled to an Order of Possession two days after service on the tenant.

I find that the landlord is entitled to receive of \$1,395.00 rent for January 2009, \$1,395.00 rent for February 2009 and \$1,395.00 rent for March 2009. In regards to the bank fees, I note that the tenancy agreement provides for costs of \$25.00 bank fees for NSF cheques and I find that the landlord is entitled to \$100.00. I note that the tenancy agreement provides for liquidated damages of \$1,000.00 if the tenancy does not run to its expiry date and I find that the landlord is entitled to \$1000.00. The total amount of rental costs owed are \$5,285.00

Damage Claim

The landlord has claimed estimated damages to the carpeting in the amount of \$4,719.54. In regards to an Applicant's right to claim damages from the another party, Section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

I find that in order to justify payment of damages under section 67, the Applicant 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. It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the claimant, that being 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 respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred

I find that the landlord has met the burden of proof in showing that the tenant caused damages in non-compliance with the Act and that the landlord incurred costs as a result. I find that the landlord's prompt attention to the carpet damage will assist in possibly mitigating further losses in regards to re-renting the unit. Therefore I find that all elements of the test for damages have been satisfied and that the landlord is entitled to compensation for the replacement of the damaged carpeting not to exceed \$4,719.54 plus \$235.97 G.S.T. for total compensation of \$4,955.51.

Conclusion

I find that the landlord has established a total monetary claim of \$10,290.51 comprised of \$4,285 rental arrears and NSF charges owed, \$1,000.00 liquidated damages, \$4,955.51 for carpet replacement and the \$50.00 fee paid by the landlord for this application. I order that the landlord retain the security deposit and interest of \$695.66 in partial satisfaction of the claim leaving a balance due of \$9,594.85.

I hereby grant the Landlord an order under section 67 for \$9,594.85. 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.

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.

March 2009

Date of Decision

Dispute Resolution Officer