

## **DECISION**

Dispute Codes      OPR MNR MNSD FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession and a Monetary Order for unpaid rent, to keep all or part of the security and pet deposit, and to recover the cost of the filing fee from the tenant.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, delivered in person by a Bailiff to the tenant on March 23, 2009.

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

All of the testimony and documentary evidence was carefully considered.

### Issues(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 under section 55 of the *Act*.
- Whether the landlord is entitled to monetary compensation under section 67 of the *Act* for unpaid rent
- Whether the landlord is entitled to recover the filing fee from the tenant for the cost of this application under section 72(1) of the *Act*
- Whether the landlord is entitled to keep all or part of the security and pet deposit under section 38(1)(d) of the *Act*.

### Background and Evidence

The tenancy began as a fixed term tenancy commencing on December 1, 2007 and switching to a month to month tenancy on December 1, 2008. The tenant paid a security deposit in the amount of \$400.00 and a pet deposit of \$400.00 on December 1, 2007. Rent in the amount of \$800.00 was due on the first of each month.

The landlord testified that the tenant failed to pay rent for February 2009, March 2009, and April 2009 for total rental arrears of \$2,400.00. The landlord issued a 10 day notice to end tenancy on February 9, 2009 listing a move out date of February 20, 2009, and served the notice to the tenant's minor child at the rental unit. The landlord also sent a copy of the 10 Day Notice to End Tenancy via registered mail on March 24, 2009 and provided Canada Post Mail receipt numbers during his verbal testimony.

The landlord filed an Application for Dispute Resolution on February 23, 2009 through the direct request process. The direct request decision was adjourned until today's hearing. The landlord served the tenant, via a Bailiff, with the notice of today's hearing, on March 23, 2009.

The landlord advised that the tenant vacated the rental unit on April 24, 2009 leaving the rental unit in a mess. The landlord has withdrawn his application for an Order of Possession and is filing a monetary claim for unpaid rent.

### Analysis

I find that in order to justify payment of damages or losses under section 67 of the *Act*, 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.

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 tenant.

**Order of Possession** – The landlord has withdrawn his request for an Order of Possession as the tenant has vacated the unit.

**Claim for unpaid rent** - The landlord claims loss of rent of for February 2009, March 2009, and April 2009 pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due. I find that the tenant has failed to comply with a material term of the tenancy agreement which stipulates that rent is due monthly on the first of each month.

**Claim to keep all or part of security and pet deposits.** I find that the landlord's claim meets the criteria under section 72(2)(b) of the *Act* and order this monetary claim to be offset against the tenant's security and pet deposits of \$800.00 plus interest of \$13.03 for a total of \$813.03

**Filing Fee \$50.00.** I find that the landlord has succeeded in large and that he should recover the filing fee from the tenant.

### Conclusion

The landlord has withdrawn his request for an Order of Possession.

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, and April 2009)	\$2,400.00
Filing fee	<u>50.00</u>
Sub total (Monetary Order in favor of the landlord)	<b>\$2,450.00</b>
Less Security Deposit and Interest	-813.03
<b>TOTAL MONETARY ORDER IN FAVOR OF THE LANDLORD</b>	<b>\$1,636.97</b>

I hereby grant a Monetary Order of \$1,636.97 in favor of the landlord. A copy of the landlord's decision will be accompanied by a Monetary Order for \$1,636.97. The order must be served on the respondent and is enforceable through the Provincial 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: May 01, 2009.

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Dispute Resolution Officer