

DECISION

Dispute Codes OPR MNR MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord to obtain an Order of Possession and a Monetary Order for unpaid rent and to recover the cost of the filing fee.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, served personally to the tenant by the landlord on March 19, 2009 at 7:00 p.m. at the tenant's rental unit.

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

All of the testimony and documentary evidence was carefully considered.

Preliminary Issues

The landlord advised that the tenant has paid all of the rental arrears in payments on March 17, 2009 of \$200.00, April 15, 2009 of \$715.00, and April 22, 2009 of \$500.00. The landlord testified that they have agreed to reinstate the tenancy agreement, are withdrawing their request for an Order of Possession, withdrawing their request for a monetary claim for unpaid rent, and are seeking a monetary claim to recover the cost of the filing fee.

Issues(s) to be Decided

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

- Whether the landlord is entitled to a Monetary Order under section 72 of the *Act* to recover the cost of the filing fee.

Background and Evidence

The landlord testified that the tenant has occupied the rental unit since February 1, 2003 and the current monthly rent is \$895.00 payable on the first of each month.

The landlord testified that given the tenant's occupation, he usually struggles with his rent payments two times per year. The landlord stated that although they have been issued Orders of Possession in previous Dispute Resolution Hearings for this tenant, the landlord has never served the tenant with an Order of Possession because he has always paid his rental arrears and the landlord has always reinstated the tenancy.

The landlord issued a 10 Day Notice to End tenancy on March 2, 2009 and posted the notice on the tenant's door on March 2, 2009 at 4:00 p.m.

The landlord advised that the tenant has paid his rental arrears so the landlord has withdrawn their request for an Order of Possession, withdrawn their request for a monetary claim for unpaid rent, and are seeking to recover the filing fee for today's Dispute Resolution Hearing.

Analysis

The landlord testified that after filing for dispute resolution on this occasion the landlord allowed the tenant to pay the rental arrears and reinstated the tenancy.

The landlord has applied for dispute resolution in regards to this same tenant on five previous occasions and has previously been issued two Orders of Possession and several Monetary Orders, the most recent monetary claim ordering the landlord to offset the rental arrears against the tenant's security deposit. I HEREBY ORDER the Monetary Order issued October 15, 2008 and the Orders of Possession issued on October 15, 2008 and October 17, 2006 are hereby cancelled, and are of no force or effect.

While I find that the landlord has complied with section 7(2) of the *Act* and has done whatever is reasonable to minimize their damage or loss by negotiating payment of the rental arrears and reinstating the tenancy with the tenant, I find that given the history of repeated applications for dispute resolution and the continued reinstatement of the tenancy, that the landlord might want to try to come to payment arrangements with the tenant first and then if the payment options are not followed apply for dispute resolution.

As the landlord has incurred the cost of the filing fee as a result of the tenant's breach of Section 26 of the *Act* which stipulates that a tenant must pay rent when it is due, I find in favour of the landlord's request to recover the \$50.00 filing fee from the tenant.

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for \$50.00. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ORDER the Monetary Order issued October 15, 2008 and the Orders of Possession issued on October 15, 2008 and October 17, 2006 are hereby cancelled, and are of no force or effect.

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 13, 2009.

Dispute Resolution Officer