

DECISION

Dispute Codes OPR OPC OPB MNR MND FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession for unpaid rent, for cause, for breach of an agreement, and for a Monetary Order for unpaid rent, for damage to the unit, and to recover the cost of the filing fee for this application.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, served in person April 22, 2009, to the tenant at the rental unit.

Both the landlord and tenant appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross exam each other.

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* for unpaid rent and cause
- Whether the landlord is entitled to a Monetary Order under section 67 of the *Act* for unpaid rent and for damage to the rental unit.

Background and Evidence

The month to month tenancy began April 1, 2007 with monthly rent of \$700.00 payable on the first of the month. The tenant paid a security deposit of \$350.00 on April 1, 2007.

The landlord testified that a 1 Month Notice to End Tenancy was issued to the tenant on March 27, 2009 with an effective date of May 1, 2009 and was hand delivered to the tenant at the rental unit.

The landlord stated that a 10 Day Notice to End Tenancy was issued for unpaid April 2009 rent of \$700.00, was issued April 8, 2009 and hand delivered to the tenant on April 8, 2009 at 8:52 p.m. in the presence of the landlord's witness.

The landlord testified that she has withdrawn her request to end the tenancy because the tenant has vacated the rental unit.

The landlord testified that the tenant did not vacate the rental unit May 4, 2009 but later stated that the tenant was moving out until late into the evening on Sunday May 3, 2009.

The tenant testified that she moved out on Friday May 1, 2009 and not on the weekend. The tenant stated that she moved until the late hours of the evening on Friday May 1, 2009 and that when she returned to clean the rental unit, on another day, the landlord had changed the lock and the tenant could not gain access to the unit to clean it.

The landlord testified that the tenant did not return the keys for the rental unit to the landlord so the landlord changed the locks.

The landlord is seeking a monetary claim for unpaid rent for April 2009 of \$700.00 and partial rent for the period of May 1 to May 4, 2009.

The tenant testified that she did not pay April 2009 rent as she felt she had a right to deduct what she felt was money owed by the landlord to the tenant.

The landlord stated that the tenant has not provided the landlord with a forwarding address and the landlord has not returned any portion of the security deposit.

The landlord is seeking a monetary order of \$700.00 for damages to the rental unit she claimed were caused by the tenant. The landlord testified that she did not conduct a move-in inspection report and although the landlord did not conduct an official move-out inspection report the landlord did walk through the rental unit after the tenant had vacated the unit.

The tenant disputes the landlord's claim for damage stating that she did not damage the rental unit.

Analysis

Order of Possession - The landlord has withdrawn her application for an Order of Possession as the tenant has vacated the rental unit.

Monetary Order – I find that in order to justify payment of damages under section 67 of the *Act*, the Applicant landlord 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 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

The tenant testified that she failed to pay rent for April 2009 and by her own statement has violated Section 26 of the *Residential Tenancy Act* which stipulates that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. I find that the landlord has met the requirements of the test to prove damages and find in favor of their monetary claim for unpaid rent of \$700.00 for April 2009.

The landlord is claiming unpaid rent for the period of May 1 to May 4, 2009 claiming that the tenant did not vacate the rental unit until May 4, 2009. The landlord contradicted her own statement when she stated on several occasions throughout her verbal testimony that the tenant moved out on Sunday May 3, 2009. The tenant disputes the landlord's statement stating that she moved out on May 1, 2009 as per the 1 Month Notice to End Tenancy. In the presence of contradictory evidence provided by the landlord along with the tenant's testimony disputing the landlord's statement and in the absence of any supporting documentary evidence I hereby dismiss the landlord's claim of unpaid rent for May 1 to May 4, 2009, without leave to reapply.

The landlord is claiming \$700.00 for damages to the rental and admitted that the move-in inspection and move-out inspection reports were not completed. The landlord has failed to provide any documentary evidence to prove the condition of the rental unit prior to the tenant taking possession in support of their claim that the tenant has damaged the rental unit. I find that the landlord has failed to meet the test for damages as listed above and hereby dismiss the landlord's application for a monetary claim for damage, without leave to reapply.

As the landlord was partially successful with their claim I hereby approve the landlord's claim to recover the filing fee from the tenant.

I find that the landlord is entitled to a monetary claim, that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit, and that the landlord is entitled to recover the filing fee from the tenant as follows:

Unpaid Rent for April 2009	\$700.00
Filing fee	50.00
Sub total (Monetary Order in favor of the landlord)	\$750.00
Less Security Deposit of \$350.00 plus interest of \$9.27	-359.27
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$390.73

Conclusion

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

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 \$390.73. The order must be served on the tenant and is enforceable through the Provincial Court 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 14, 2009.

Dispute Resolution Officer