

DECISION

Dispute Codes OPR MNR MNSD MNDC FF

Introduction

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

Service of the hearing documents was done in accordance with section 89 of the *Act*, sent via registered mail on April 21, 2009. The Canada Post tracking number was provided in the landlord's verbal testimony. The tenant is deemed to be served the hearing documents on April 26, 2009, the fifth day after they were mailed as per section 90 of the *Act*.

Both the landlord and tenant appeared, acknowledged receipt of evidence submitted by the other, 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.

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 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 monetary compensation under section 72(1) of the *Act* to recover filing fee from the tenant for the cost of this application.

- Whether the landlord is entitled to keep all or part of the security deposit under section 38(1)(d) of the *Act*.

Background and Evidence

The tenancy was a month to month term commencing on November 15, 2007. The tenant paid a security deposit in the amount of \$330.00 on November 15, 2007 and rent in the amount of \$688.00 was due on the first of each month.

The landlord testified that the tenant has been habitually late in paying rent. When the tenant failed to pay the March rent on time a 10 Day Notice to End Tenancy listing a move out date of March 14, 2009, was issued by the landlord and put through the mail slot in the tenant's door on March 6, 2009 in the afternoon.

The landlord advised that the tenant paid the rental arrears for March and April, 2009. The landlord submitted copies of receipts issued for "use and occupation only" for payments received for March and April 2009 rent. The landlord testified that the tenant is currently in arrears for all of May rent for a total rental arrears of \$688.00.

The tenant asked if there was any way he would be allowed to stay in the rental unit. The tenant testified that he is currently unemployed and that he is trying to get Employment Insurance but has been unable to get a record of employment from one of his previous employers.

The landlord advised that given the tenant's habit of paying his rent late that the landlord is wishing to proceed with an Order of Possession and the 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 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.

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. I find that the landlord has met the requirements for the 10 day notice to end tenancy pursuant to section 46(1) of the *Act*, that the tenant failed to pay the rent within 5 days after receiving this notice, and that the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit to which the notice relates pursuant to section 46(5) of the *Act*.

Claim for unpaid rent. The landlord claims for unpaid rent of \$688.00 for May 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.

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

Claim to keep all or part of security deposit. 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 deposit of \$330.00 plus interest of \$5.60 for a total of \$335.60

Monetary Order – 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 May 2009	\$688.00
Filing fee	<u>50.00</u>
Sub total (Monetary Order in favor of the landlord)	\$738.00
Less Security Deposit of \$330.00 plus interest of \$5.60	-335.60
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$402.40

Conclusion

I HEREBY FIND that the landlord is entitled to an Order of Possession 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.

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 \$402.40. The order must be served on the respondent 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 15, 2009.

Dispute Resolution Officer