

DECISION

Dispute Codes OPR MND MNR MNSD 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, to keep all or part of the security deposit, for damage caused to the rental unit and to recover the cost of the filing fee.

Service of the hearing documents was done in accordance with section 89 of the *Act*, delivered in person to the tenant by the property manager on April 16, 2009, in the afternoon at the rental unit. The property manager was called on his cell phone and provided testimony in support of this service.

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

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 and damage to the rental unit.
- 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 fixed term commencing on January 20, 2009 and scheduled to end on January 31, 2010. The tenant paid a security deposit in the amount of \$650.00 on December 29, 2008 and rent in the amount of \$1,300.00 was due on the first of each month.

The landlord testified that the tenant failed to pay April 2009 rent so a 10 Day Notice to End Tenancy listing a move out date of April 12, 2009, was issued by the landlord and given personally to the tenant by the property maintenance manager on April 2, 2009.

The landlord advised that the tenant moved out of the rental unit on April 16, 2009 and so the landlord is withdrawing their request for an Order of Possession.

The landlord is seeking a Monetary Order for April 2009 rent in the amount of \$1,300.00, a late payment fee of \$25.00 and to recover these amounts from the security deposit.

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. The landlord has withdrawn their request for an Order of Possession as the tenant vacated the rental unit on April 16, 2009.

Claim for unpaid rent. The landlord claims for unpaid rent of \$1,300.00 for April 16, 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 for damage. The landlord did not mention a claim for damage during her testimony and there was no documentary evidence provided in support of a claim for damages. I hereby dismiss the landlord's application for damage to the unit, without leave to reapply.

Late payment fee. The landlord is claiming \$25.00 for a late payment fee and testified that section 10 of the tenancy agreement lists the provision for the landlord to charge a the fee. The landlord has submitted only the first page of the tenancy agreement into documentary evidence and there is no evidence that a clause is present to allow a late payment fee. I find that the landlord has failed to prove their claim for a late payment fee and hereby dismiss the claim without leave to reapply.

Filing Fee \$50.00. I find that the landlord has partially succeeded in their claim and that she 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 \$650.00 plus interest of \$0.08 for a total of \$650.08

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 April 2009	\$1,300.00
Filing fee	50.00
Sub total (Monetary Order in favor of the landlord)	\$1,350.00
Less Security Deposit of \$650.00 plus interest of \$0.08	-650.08
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$699.92

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 \$699.92. 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 26, 2009.

Dispute Resolution Officer