

DECISION

Dispute Codes OPR MNR 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 to each tenant via registered mail on April 24, 2009. The Canada Post tracking number was provided in the landlord's documentary evidence. The tenants are deemed to be served the hearing documents on April 29, 2009, the fifth day after they were mailed as per section 9(a) of the *Act*.

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.

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.

Background and Evidence

The tenancy was a month to month tenancy commencing on April 1, 2004 with rent payable on the first of each month in the amount of \$1,800.00.

The landlord testified that the tenants were served a 10 Day Notice to End Tenancy on April 6, 2009. Service of the 10 Day Notice to End Tenancy was done by the Resident Maintenance Manager who testified that the notice was placed in the tenants' mailbox on April 6, 2009 at 2:45 p.m. with a move out date listed of April 20, 2009.

The landlord testified that he left a message for the tenants, on their voice mail, on April 14, 2009 but that there was no response. The Resident Maintenance Manager testified that he had knocked on the tenants' door several times, between April 14, 2009 to May 29, 2009 that there was no answer, and that he did not enter the rental unit until this morning, May 29, 2009, and found that the tenants had vacated the rental unit, leaving the keys inside the unit.

In light of the tenants vacating the rental unit, the landlord has withdrawn his request for an Order of Possession and is seeking a Monetary Order for April, 2009 and May, 2009 rent, and to recover the cost of the filing fee from the tenants.

The landlord advised that he did not receive a forwarding address for the tenants.

Analysis

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 The landlord has withdrawn his request for an Order of Possession.

I find that in order to justify payment of damages under sections 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, in this case the landlord, bears the burden of proof and the evidence furnished by the Applicant landlord 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

In regards to the landlord's right to claim damages from the tenant, Section 7 of the *Act* states that if the landlord or tenant does not comply with this *Act*, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the *Act* grants a Dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

Claim for unpaid and loss of rent. The landlord claims for unpaid rent of \$1,800.00 for April 2009 and loss of rent of \$1,800.00 for May 2009. Section 26 of the *Act* stipulates a tenant must pay rent when it is due. I find that in respect to April 1, 2009 rent 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 and that based on testimony and evidence before me that the landlord has met the requirements of the test for damage or loss for April 2009 rent.

With respect to May 2009 rent, the tenants were issued a 10 Day Notice to End Tenancy, which was placed in their mailbox on April 6, 2009. The 10 Day Notice to End Tenancy was deemed to have been served on April 9, 2009, three days after it was

placed in the tenants' mailbox pursuant to section 90 of the *Residential Tenancy Act*, with an effective date of April 19, 2009 (10 days later). Section 46(5) of the *Act* states that a tenant who has received a notice under this section, who does not pay the rent or make an application for dispute resolution, 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 by that date.

Section 7 of the *Act* states that a landlord who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the loss.

While I find that the landlord has suffered a loss of rent for May 2009, I also find that the landlord had a duty to determine if the tenants acted on the 10 Day Notice to End Tenancy, by posting a 24 hour notice to enter the rental unit, if the landlord could not get in contact with the tenants on April 19, 2009. If after entering the rental unit on April 20, 2009 the landlord found that the tenants had vacated the unit, the landlord would have had 10 days to try to re-rent the unit for May 2009. Based on the above, I find that the landlord has not met the test for loss of May 2009 rent and dismiss their claim without leave to reapply.

Filing Fee \$50.00. I find that the landlord has primarily succeeded with their claim and that he should recover the filing fee from the tenants.

Monetary Order – I find that the landlord is entitled to a monetary claim and that the landlord is entitled to recover the filing fee from the tenants as follows:

Unpaid Rent for April 2009 @ 1,800.00 per month	\$1,800.00
Filing fee	<u>50.00</u>
TOTAL AMOUNT DUE TO THE LANDLORD	\$1,850.00

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 \$1,850.00. The order must be served on the respondent tenants 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 29, 2009.

Dispute Resolution Officer