

## **DECISION**

Dispute Codes      OPR MNR

### 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 security deposit, and to recover the cost of filing fee from the tenant.

Service of the hearing documents was done in accordance with section 89 of the *Act*, delivered to the tenant in person by the landlord, at the rental unit, on June 7, 2009. The tenant confirmed receipt of the hearing documents from the landlord.

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

### Issue(s) to be Decided

Has the landlord proven entitlement to an Order of Possession pursuant to section 55 of the *Residential Tenancy Act* and a Monetary Order pursuant to sections 67 and 72 of the *Act*?

### Background and Evidence

The tenancy was a month to month term commencing on February 1, 2009 with rent payable in the amount of \$800.00, due on the 1<sup>st</sup> of each month. The tenant failed to pay the security deposit in the amount of \$425.00.

The landlord testified that the tenant paid \$400.00 towards February 2009 rent and has failed to pay March, April, May and June 2009 rent. On May 13, 2009 the landlord issued a 10 day notice to end tenancy listing a move out date of May 10, 2009, and

hand delivered it to the tenant on May 13, 2009. The tenant confirmed receipt of the 10 Day Notice to End Tenancy for unpaid rent.

The tenant testified that she has only paid \$400.00 towards rent and or security deposit since taking occupancy of the rental unit. The tenant stated that she considered the \$400.00 as the damage deposit. The tenant stated that she has fallen onto hard times and could not pay the rent but that she understands she is indebted to the landlord for the past rent.

The landlord is seeking an Order of Possession for as soon as possible.

### Analysis

I find that in order to justify payment of damages or losses under section 67 of the *Act*, the Applicant 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.** Section 53 of the *Act* states that if a landlord gives a notice to end tenancy effective on a date that does not comply with the *Act*, the notice is deemed to be changed in accordance with subsection 53(2) or (3). I find that the move out date listed on the 10 Day Notice to End Tenancy is listed incorrectly as the notice was not served until May 13, 2009 which makes the move out date to be May 23, 2009. I note that the notice is still considered valid.

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 stated he received \$400.00 towards the security deposit or for February 2009 and that the tenant has failed to pay anything further. I find that the \$400.00 would be considered security deposit as listed below and that the tenant has failed to pay \$800.00 for the five months rent for February, March, April, May, and June 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.

**Security deposit** Section 17 of the *Residential Tenancy Act* allows a landlord to require a security deposit however Section 19 of the *Act* stipulates that the security deposit cannot exceed  $\frac{1}{2}$  of one month's rent. In this situation I find that the tenant has paid \$400.00 of Security Deposit.

**Filing Fee \$50.00.** I find that the landlord has succeeded with their claim and that he is entitled to recover the filing fee from the tenant.

**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 Feb. Mar. Apr. May and June 2009 (5 x \$800.00)	\$4,000.00
Filing fee	<u>50.00</u>
Sub total (Monetary Order in favor of the landlord)	<b>\$4,050.00</b>
Less Security Deposit of \$400.00 plus interest of \$0.00	- 400.00
<b>TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD</b>	<b>\$3,650.00</b>

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 \$3,650.00. The order must be served on the respondent 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: June 15, 2009.

---

Dispute Resolution Officer