

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 to tenant (B) was done in accordance with section 89(1) of the *Act*, served to her in person by the maintenance man and witnessed by the business controller. The service to tenant (B) was conducted at the rental unit on May 13, 2009. This service meets the requirements for an application for an Order of Possession and a Monetary Order.

Service of the hearing documents to tenants (A) and (C) was done in accordance with section 89(2) of the *Act*, by leaving the documents at the tenants' residence with an adult who apparently resides with the tenants. This service meets the requirements for an application for an Order of Possession.

Two agents appeared for the landlord, gave affirmed testimony, were 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

Is the landlord entitled to an Order of Possession pursuant to Section 55 of the *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 November 1, 2008 with rent payable on the first of each month in the amount of \$1,000.00.

The maintenance person testified that the tenancy agreement was a verbal agreement and that a security deposit was not requested and not paid by the tenants.

The maintenance person advised that there was an error on their application for dispute resolution in relation to the manner in which the 10 Day Notice to End Tenancy was served. The maintenance person testified that the 10 Day Notice was not posted on the tenants' door that it was hand delivered to tenant (A) on April 20, 2009, at the rental unit by the maintenance person and witnessed by the business controller.

The maintenance person advised that the tenants have failed to pay \$300.00 of March 2009 rent, \$1,000.00 for April, \$1,000.00 for May, and \$1,000.00 for June 2009 for total arrears of \$3,300.00.

The witness testified that these tenants have made the neighborhood unsafe, that there are needles all over the place and heavy traffic coming to the rental unit.

Analysis

A **"tenancy agreement"** means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

I find that based on the above definition, oral terms contained in, or form part of, tenancy agreements and may still be recognized and enforced.

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 tenants failed to pay the rent within 5 days after receiving this notice, and that the tenants are 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*.

An Order of possession has been approved against all the tenants, who were properly served with Notice and the Application for Dispute Resolution and the Notice to End Tenancy as required under sections 88 and 89 of the *Act*.

Claim for unpaid rent. The landlord claims for unpaid rent of \$3,300.00, pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due. I find that the tenants have failed to comply with a material term of the tenancy agreement which stipulates that rent is due monthly on the first of each month.

I hereby approve a monetary Order against tenant (B) who was personally served with the Notice of Direct Request Proceeding as required under section 89(1) of the *Act*.

Filing Fee \$50.00. I find that the landlord has succeeded with their claim and that they are entitled to recover the filing fee from the tenants.

Monetary Order – I find that the landlord is entitled to a monetary claim against tenant (B) and that the landlord is entitled to recover the filing fee from the tenant as follows:

Unpaid Rent for March of \$300.00	\$300.00
Unpaid Rent for April, May, June at \$1,000.00 per month	3,000.00
Filing fee	50.00
TOTAL AMOUNT DUE TO THE LANDLORD	\$3,350.00

If the landlord determines that there was a security deposit paid, the landlord is advised that the tenants' security deposit is to be administered in accordance with Section 38 of the *Residential Tenancy Act*.

Conclusion

I HEREBY FIND that the landlord is entitled to an Order of Possession effective **two days after service on the tenants**. This order must be served on the Respondents 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 against tenant (B). A copy of the landlord's decision will be accompanied by a Monetary Order for \$3,350.00. 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: June 19, 2009.

Dispute Resolution Officer