

DECISION

Dispute Codes OPR MNSD MNR MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession and a Monetary Order for unpaid rent and utilities, to retain the entire pet and or security deposit, and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents, by the Landlord to the Tenant was done in accordance with section 89 of the *Act*, served personally to the Tenant by the Landlord on May 16, 2009 at 6:10 p.m. at the rental unit.

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

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

Has the Landlord proven entitlement to obtain an Order of Possession pursuant to Section 55 of the *Residential Tenancy Act* and a Monetary Order under Sections 38, 67, and 72 of the *Act*?

Background and Evidence

The Landlord testified that the tenant was an occupant of the rental unit when she purchased the property in April 2006. The Landlord stated that she did not have a copy of the purchase agreement to review during the hearing to determine how much of a security and or pet deposit was paid by the tenant and when the tenancy began.

The Landlord argued that the Tenant was paying rent on the first of each month in the amount of \$980.00 and 60% of the utilities. The Landlord claims that the Tenant did not pay April and May rent or utilities and that a 10 Day Notice to End Tenancy was served to the Tenant on May 5, 2009 at 9:20 p.m.

The Landlord testified that on June 1, 2009 the Tenant made a payment towards rent, that the Landlord issued a receipt for "use and occupancy only" and that the Tenant currently owes \$220.00 towards June 2009 rent and \$174.60 for Utilities.

The Landlord advised that the Tenant was served an amended application for dispute resolution on June 14, 2009 at 10:35 p.m. and that the Landlord and Tenant have come to an agreement that the Tenant will vacate the rental unit no later than June 30, 2009. The Landlord has requested an Order of Possession effective June 30, 2009.

Analysis

Order of Possession – Documentary evidence filed by the Landlord indicates that the Tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent in person on May 5, 2009 at 9:20 p.m. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the rent or apply to dispute the Notice to End Tenancy within five days. I accept that the tenant has been served with notice to end tenancy effective on May 15, 2009, 10 days after service was effected on May 5, 2009. Based on the foregoing, I find that the Tenant is conclusively presumed, under section 46(5) of the Act, to have accepted that the tenancy ended on the effective date of the Notice.

Monetary Claim - Section 3.3 of the *Residential Tenancy Act* stipulates that if a respondent does not attend the dispute resolution proceeding, the applicant must prove to the Dispute Resolution Officer that each respondent was served as required under the Act. The person who served the documents must either attend the dispute resolution proceeding as a witness. In the absence of the Tenant and the Landlord's

spouse who witnessed the Landlord serving the Tenant notice of today's hearing, I find that the Landlord has failed to prove that the notice of dispute resolution was served in accordance with Section 89(1) of the *Act* for the purpose of requesting a Monetary Order. Based on the aforementioned I hereby dismiss the Landlord's monetary claim with leave to reapply.

Filing Fee – As the Landlord was partially successful with her claim I find that she is entitled to recover the cost of the filing fee of \$50.00 from the tenant and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit. The balance of 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 **June 30, 2009 at 1:00 p.m.** This order must be served on the Respondent Tenant and may be filed in the Supreme Court and enforced as an order of that Court.

I HEREBY ORDER the Landlord to retain \$50.00 from the Tenant's security deposit and order the Landlord to administer the balance of the Tenant's security deposit in accordance with Section 38 of the *Residential Tenancy Act*.

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 23, 2009.

Dispute Resolution Officer