

## **DECISION**

Dispute Codes      OPR MNR MNSD

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords to obtain an Order of Possession and a Monetary Order for unpaid rent and to keep all or part of the security deposit in partial satisfaction of their claim.

Service of the hearing documents, by the Landlords to the Tenants, was done in accordance with section 89 of the *Act*, served in person to the Tenants by the two male Landlords on May 25, 2009 at the rental unit.

The Landlords appeared, 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.

### Issues(s) to be Decided

Have the Landlord's proven their entitlement to an Order of Possession under Section 55 of the *Residential Tenancy Act* and have they proven their entitlement to a Monetary Order under Sections 38 and 67 of the *Act*?

### Background and Evidence

The month to month tenancy began on January 1, 2009 and ended when the Tenants vacated the rental unit on May 25, 2009. Rent was payable on the first of each month in the amount of \$1,100.00 and the Tenants paid a security deposit of \$550.00 on January 1, 2009.

The Landlords testified that a 10 Day Notice to End Tenancy was issued to the Tenants on April 25, 2009 for unpaid rent of \$1,100.00 for April 2009, served to the Tenants in

person, at the rental unit on April 25, 2009. The current arrears are for April and May 2009 at \$1,100.00 per month for a total of \$2,200.00 rental arrears.

The Landlords advised that the Tenants vacated the rental unit on May 25, 2009, did not attend the move out inspection and did not provide the Landlords with a forwarding address. The Landlords have withdrawn their request for an Order of Possession.

The Landlords are requesting a Monetary Order for unpaid rent for April and May, to recover the cost of the filing fee from the Tenants for this application, and to retain the security deposit in partial satisfaction of their claim.

### Analysis

The Landlords withdrew their request for an Order of Possession.

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.

**Claim for unpaid rent.** The Landlords claim for unpaid rent of \$1,100.00 for April and \$1,100.00 for May 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.

**Filing Fee \$50.00.** I find that the Landlords have succeeded in large and that they should recover the filing fee from the Tenants.

**Monetary Order** – I find that the Landlords are entitled to a monetary claim, that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit, and that the Landlords are entitled to recover the filing fee from the Tenants as follows:

Unpaid Rent for April and May 2009	\$2,200.00
Filing fee	<u>50.00</u>
Sub total (Monetary Order in favor of the landlord)	<b>\$2,250.00</b>
Less Security Deposit of \$550.00 plus interest of \$0.00	-550.00
<b>TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD</b>	<b>\$1,700.00</b>

I note that the Landlords submitted evidence in support of a monetary claim for damages and that the application did not include a claim for damages. The Landlords are at liberty to re-apply for dispute resolution for damages and to resubmit their evidence in support of such a claim.

### Conclusion

I HEREBY FIND in favor of the Landlords' monetary claim. A copy of the Landlords' decision will be accompanied by a Monetary Order for \$1,700.00. 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 25, 2009.

---

Dispute Resolution Officer