

DECISION

Dispute Codes OPR MNR MNSD MNDC 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, for late payment fees and to recover the cost of the filing fee from the Tenant.

Service of the hearing documents was done in accordance with section 89 of the *Act*, served personally to the Tenant by the Male Resident Manager in the presence of the Female Resident Manager on May 20, 2009 at 5:35 p.m. at the rental unit.

The Landlord and Property Managers 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.

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 and late payment fees
- 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.
- Whether the landlord is entitled to keep all or part of the security deposit under section 38(1)(d) of the *Act*.

Background and Evidence

The tenancy was a month to month term which commenced on October 1, 2008 for a fixed term of six months and then switched over to a month to month. The tenant paid a security deposit in the amount of \$362.50 on October 1, 2008 and rent in the amount of \$725.00 was due on the first of each month.

The Property Manager testified that when the Tenant failed to pay May 2009 rent a 10 Day Notice to End Tenancy was posted on the Tenant's door May 4, 2009 at 9:00 a.m. by the Male Resident Manager. Service was confirmed by the Male Resident Manager's testimony.

The Property Manager advised that the Tenant did not pay rent for June 2009 or the late payment fees for May and June as stipulated in section 10 of their tenancy agreement. The Property Manager is seeking an Order of Possession and a monetary claim for two months rental arrears (\$725.00 x 2) and \$20.00 per month in late payment fees.

Analysis

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 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 claims for unpaid rent of \$725.00 for May 2009 and \$725.00 for 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.

Late Payment Fees Section 7 of the *Residential Tenancy Regulation* allow for a Landlord to charge late payment fees as long as these fees are written in the signed tenancy agreement. Based on the documentary evidence supplied by the Landlord I find that section 10 of the tenancy agreement provides for late payment fees and allow the Landlord's claim for \$20.00 for May and \$20.00 for June 2009 of late payment fees.

Filing Fee \$50.00. I find that the Landlord has succeeded in large and that she should recover the filing fee from the Tenant.

Claim to keep all or part of security deposit. I find that the Landlord's claim meets the criteria under section 72(2)(b) of the *Act* and order this monetary claim is to be offset against the Tenant's security deposit of \$362.50 plus interest of \$1.37 or a total of \$363.87.

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 May 2009 and June 2009 (\$725.00 x 2)	\$1,450.00
Late Payment Fee May 2009 and June 2009 (\$20.00 x 2)	40.00
Filing fee	50.00
Sub total (Monetary Order in favor of the landlord)	\$1,540.00
Less Security Deposit of \$362.50 plus interest of \$1.37	-363.87
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$1,176.13

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 Tenant 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 \$1,176.13. 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 26, 2009.

Dispute Resolution Officer