

## **DECISION**

Dispute Codes      OPR MNR 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 to recover the cost of the filing fee from the tenants.

Service of the hearing documents, by the landlord to each tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on April 24, 2009. Mail receipt numbers were provided in the landlord's documentary evidence. The tenants were deemed to be served the hearing documents on April 29, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord and tenants appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross exam each other.

All of the testimony and documentary evidence was carefully considered.

### Issues(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* for unpaid rent
- Whether the landlord is entitled to a Monetary Order under section 67 of the *Act* for unpaid rent

### Background and Evidence

The tenancy began on October 1, 2008 and ended on May 24, 2009 when the tenants vacated the rental unit after receiving a 10 Day Notice to End Tenancy, issued on April 9, 2009. Rent was payable at \$730.00 per month and was due on the 1<sup>st</sup> of each month. There was no security or pet deposits paid in relation to this tenancy.

The landlord stated that she has withdrawn her application for an Order of Possession as the tenants have vacated the rental unit.

The landlord testified that the 10 Day Notice to End Tenancy was sent to the tenants rental unit address via Canada Post on April 9, 2009 in the regular mail.

The landlord testified that the tenants paid April 2009 rent on April 28, 2009 and that a letter dated May 6, 2009 was issued to the tenants confirmed receipt of the payment for April 2009 for use and occupancy only.

The tenants testified that they have rented through BC Housing for over seven years and that on September 20, 2008 their rental unit burnt down and they lost their personal possessions. The tenants stated that they were given the opportunity to move into the existing rental unit and that they were told to request work orders to have any deficiencies repaired. The male tenant stated that there were many things unfinished and the presence of mould all of which he had requested to be fixed and or repaired but to no avail. The tenants stated that they did not apply to dispute resolution to request orders to have the landlord finish and repair the rental unit.

The tenants confirmed that they vacated the rental unit on May 24, 2009 and that when they returned on May 30<sup>th</sup> and May 31<sup>st</sup>, 2009, to pick up the remainder of their possession and to clean the rental unit, they found that the locks had been changed. The tenants stated that they contacted the resident building manager and were told to wait until the outcome of today's hearing before the resident building manager could give the tenants access to the rental unit.

The tenants testified that they were told by the resident manager to call him Tuesday June 2, 2009 and that the resident manager would make arrangements for the tenants to gain access to the rental unit and conduct a move out inspection walk through on June 12, 2009.

The male tenant testified that they paid the April 2009 rent late and that they have not paid anything towards May 2009 rent.

The landlord testified that she agreed to allow the tenants access to the rental unit so they could remove the rest of their possessions and to allow the tenants the opportunity to clean the unit and attend a move-out walk through inspection. The landlord stated that the tenants were to continue contacting the resident manager to make the arrangements to gain access to the rental unit.

The landlord advised that they are not anticipating re-renting the unit in June 2009 as they are having problems finding available contractors to repair the rental unit.

The tenant had requested the opportunity to make payment arrangements.

The landlord requested that the tenants call her office after the hearing to make such arrangements. The landlord testified that while they are open to making payment arrangements they are still seeking a monetary order for unpaid rent for May 2009 in the amount of \$730.00 and to recover the cost of the filing fee from the tenants for this application.

### Analysis

In regards to the tenants' claims relating to the rental unit being in a state of disrepair and the presence of mould, I am not able to neither hear nor consider the tenants' claims during these proceedings as this hearing was convened solely to deal with the landlord's application. That being said, I must point out that the tenants are at liberty to make their claims in a separate application.

I find that in order to justify payment of damages under sections 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. It is important to note that in a claim for damage or loss under the

*Act*, the party claiming the damage or loss, in this case the landlord, bears the burden of proof and the evidence furnished by the Applicant landlord must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the *Act* or agreement
3. Verification of the Actual amount required to compensate for loss or to rectify the damage
4. Proof that the claimant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage

In regards to the landlords right to claim damages from the tenant, Section 7 of the *Act* states that if the landlord or tenant does not comply with this *Act*, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the *Act* grants a Dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

The tenants admitted that they did not pay anything towards May 2009 rent, that they occupied the rental unit until May 24, 2009 and that they still have possessions in the rental unit. Although the tenants vacated the rental unit after receiving a 10 Day Notice to End Tenancy, I find that they still had occupancy of the rental unit for the full month of May 2009 and were responsible for the rent payment under their tenancy agreement. Section 26 of the *Residential Tenancy Act* stipulates that a tenant must pay rent when it is due under the tenancy agreement. Based on the aforementioned I find that the landlord has proven the test for loss and rule in favor of their claim for loss of May 2009 rent.

As the landlord was primarily successful in their claim, I approve their request to recover the cost of the filing fee from the tenants.

**Monetary Order** – I find that the landlord is entitled to a monetary claim and that the landlord is entitled to recover the filing fee from the tenants as follows:

Unpaid Rent for May 2009	\$730.00
Filing fee	50.00
<b>TOTAL AMOUNT DUE TO THE LANDLORD</b>	<b>\$780.00</b>

During the testimony the two parties came to an agreement whereby the tenants would be granted access to the rental unit to remove the rest of their possessions and the tenants would clean the rental unit in preparation for a move-out walk through inspection to be conducted by the resident building manager in the presence of the tenants.

#### Conclusion

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 \$780.00. The order must be served on the respondent tenants and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ORDER the landlord to grant the tenants access to the rental unit to remove all of the tenants' possessions from the rental unit and that the tenants are to clean and prepare the rental unit for a move-out inspection walk through which is to be completed no later than 1:00 p.m. on June 8, 2009.

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 01, 2009.

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Dispute Resolution Officer