

## **DECISION**

Dispute Codes      OPR OPB MNR MNSD MNDC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord to obtain an Order of Possession for unpaid rent and breach of an agreement and to obtain a Monetary Order for unpaid rent, to keep all or part of the security deposit, for money owed for damage or loss under the *Act* and to recover the cost of the filing fee from the tenant for this application.

Service of the original hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, hand delivered by the male landlord to the tenant at the rental unit on April 1, 2009 at 10:45 a.m. A copy of the amended application was sent to the tenant on May 20, 2009 via registered mail to the rental unit address. The Canada Post tracking number was provided in the landlord's testimony.

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

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 and breach of the tenancy
- Whether the landlord is entitled to a Monetary Order under section 67 of the *Act* for unpaid rent and for money owed as compensation for damage and loss under the *Act*

### Background and Evidence

The fixed term tenancy began February 1, 2009 with an expiry date of July 31, 2009. Rent was payable on the 1<sup>st</sup> of each month in the amount of \$1,250.00. The tenant paid a security deposit in the amount of \$625.00 on July 31, 2009. The tenancy ended on April 1, 2009 when the tenant moved out of the rental unit without notice to the landlords.

The female landlord testified that on March 31, 2009 she received a telephone call from the building manager advising her that their tenant had contacted him to book the elevator for move out the next day, April 1, 2009.

The male landlord testified that he called the tenant from about 5:00 p.m. onward and after about 12 attempts the tenant finally picked up the telephone. The male landlord stated that he questioned the tenant about the rumour that the tenant was moving out and he said that the tenant told him "I'm done I'm out of here". The male landlord stated that he told the tenant that he needed to conduct a move out inspection and discuss the issues around the tenant breaking the contract. The landlord stated that the tenant refused to meet with the landlord and that the tenant told the landlord he would be out of the rental unit by 12 noon and that the tenant wanted to leave the keys with the building manager. The landlord said that he insisted on being present to get the keys as the building manager would not accept them.

The male landlord testified that when he attended the rental unit on April 1, 2009 the tenant was still moving possessions out, and the landlord said that he had asked the tenant for a forwarding address so the landlord could refund his security deposit however the tenant refused to provide the landlord with a forwarding address and told the landlord that he had written off his security deposit.

The female landlord read an e-mail she had received from the tenant late April 1, 2009 which stated that the tenant had had enough of living in the apartment where the tenant felt harassed and that the tenant needed to vacate the rental unit as soon as possible.

The landlords advised that the tenant had written them a couple of letters complaining about neighbours tapping on the walls in specific patterns and headlights purposely being shone into his windows. The female landlord stated that these complaints were forwarded to the Strata Corporation and that the neighbours were contacted but that the neighbours denied the tenant's allegations.

The female landlord testified that the tenant did not clean the rental unit on move out so she had to spend 12 hours cleaning before they could re-rent the unit. The landlord has submitted a claim of \$350.00 for cleaning. The female landlord testified that during one of her cleaning sessions her son was sitting on the built-in bed frame and was bitten by a bedbug. The landlord has claimed \$125.00 as they were required to take the bed frame apart and fumigate it.

The female landlord testified that the tenant paid April 1, 2009 rent however the cheque was returned because of a stop payment. The landlords are claiming unpaid rent for April 1, 2009 in the amount of \$1,250.00.

The female landlord testified that they advertised the rental unit immediately on two internet sites and they have lowered the rent to \$1,240.00 per month. The landlord advised that although they have had several showings they have not been able to re-rent the unit and the landlords are submitting a claim for loss of rent for May 2009 of \$1,250.00.

### Analysis

The landlords testified that the tenant has vacated the rental unit and handed the keys over to the landlords. Based on the aforementioned I find that the landlords have possession of the rental unit and no longer require an Order of Possession. I hereby dismiss the landlords' request for an Order of Possession.

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 landlord's 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.

I find that the tenant has contravened Section 45(2) of the *Residential Tenancy Act* which stipulates that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than the date specified in the tenancy agreement as the end of the tenancy, that the date is not earlier than one month after the date the landlord receives the notice, and is the day before the day in the month that rent is payable under the tenancy agreement.

Based on the testimony the tenant put a stop payment on his April 1, 2009 rent payment which I find is a contravention of Section 26 of the *Act* which stipulates a tenant must pay rent when it is due.

Based on the aforementioned I find that the landlords have proven their claim of unpaid rent of \$1,250.00 for April 2009 and loss of rent of \$1,250.00 for May 2009.

The landlord submitted as evidence invoices created by the female landlord to invoice for her time and products used to clean and fumigate the rental unit. The landlords did not submit a copy of the move-in and move-out inspection reports nor did they provide pictures or any other evidence to prove the condition of the rental unit prior to the tenant taking possession and the condition after the tenant abandoned the unit. The receipt the landlords provided for pesticide was on a date 12 days after the invoice billing for the work, and was for “pet supply” not pesticide. Based on the above I find that the landlords have failed to prove the test for damages and loss and dismiss their claim of \$350.00 for cleaning and \$125.00 for fumigation, without leave to reapply.

As the landlords were partially successful in their claim, I find that they are entitled to recover the cost of filing this application from the tenant.

**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 April 2009	\$1,250.00
Loss of Rent for May 2009	1,250.00
Filing fee	<u>50.00</u>
Sub total (Monetary Order in favor of the landlord)	<b>\$2,550.00</b>
Less Security Deposit of \$625.00 plus interest of \$0.00	-625.00
<b>TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD</b>	<b>\$1,925.00</b>

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 \$1,925.00. 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 03, 2009.

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Dispute Resolution Officer