

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, to retain the security deposit in partial satisfaction of their claim, and to recover the cost of the filing fee from the Tenants for this application.

Service of the hearing documents was done in accordance with section 89 of the *Act*, sent via registered mail on May 25, 2009. The Canada Post tracking number was provided in the Landlord's documentary evidence. The tenant is deemed to be served the hearing documents on April 26, 2009, the fifth day after they were mailed as per section 9(a) of the *Act*.

The Landlord's Agent, Landlord's Property Manager, Landlord's Maintenance person, and the Male Tenant appeared, acknowledged receipt of evidence submitted by the other, 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.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession under Section 55 of the *Residential Tenancy Act* and a Monetary Order under Sections 38, 67, and 72 of the *Residential Tenancy Act*?

Background and Evidence

The tenancy was a month to month term commencing on November 1, 2006. The Tenants paid a security deposit in the amount of \$312.50 on October 19, 2006 and rent in the amount of \$800.00 was due on the first of each month.

The Landlord's agent testified that when the Tenants failed to pay the May 2009 rent in full a 10 Day Notice to End Tenancy was issued on May 4, 2009, and was served personally to the Female Tenant by the Maintenance Worker at the rental unit during the afternoon of May 4, 2009.

The Landlord's Agent advised that the current rental arrears consist of \$300.00 owing for May, \$800.00 for June and \$800.00 for July, 2009. The Landlord's Agent is requesting to retain the security deposit, recover the \$50.00 filing fee from the Tenants, and obtain an Order of Possession effective as soon as possible.

The Male Tenant advised that he moved out of the rental unit some time in early May 2009 but his wife and children still reside at the rental unit. The Male Tenant confirmed receipt of the 10 Day Notice to End Tenancy and the fact that they have not paid rent due to a lack of funds.

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 Tenants.

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 Tenants failed to pay the rent within 5 days after receiving this notice, and that the Tenants are 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 \$300.00 for May 2009, \$800.00 for June 2009 and \$800.00 for July 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.

I note that Section 7 of the *Act* stipulates that a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this *Act* must do whatever is reasonable to minimize the damage or loss. As today is only July 2, 2009 I hereby dismiss the Landlord's claim for unpaid rent for July, with leave to reapply, as the Landlord has an obligation to re-rent the unit as quickly as possible. The Landlord is at liberty to re-apply for loss of rent for July 2009 once he has an accurate account of his total losses. I hereby approve the Landlord's claim of unpaid rent of \$300.00 for May 2009 and \$800.00 for June 2009 for a total of \$1,100.00.

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

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 to be offset against the Tenants' security deposit of \$312.50 plus interest of \$9.78 for a total of \$322.28

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 Tenants' security deposit, and that the Landlord is entitled to recover the filing fee from the Tenants as follows:

Unpaid Rent for May and June 2009 (\$300.00 + \$800.00)	\$1,100.00
Filing fee	50.00
Sub total (Monetary Order in favor of the landlord)	\$1,150.00
Less Security Deposit of \$312.50 plus interest of \$9.78	-322.28
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$827.72

Conclusion

I HEREBY FIND that the landlord is entitled to an Order of Possession effective **two days after service on the Tenants**. This order must be served on the Respondent Tenants 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 \$827.72. 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: July 02, 2009.

Dispute Resolution Officer