

DECISION

Dispute Codes OPR MNR MNSD 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, to keep all or part of the security deposit, and to recover the cost of the filing fee from the Tenants for this application.

Service of the hearing documents, by the Landlord to the Tenants, was done in accordance with section 89 of the *Act*, sent via registered mail on May 25, 2009. Mail receipt numbers were provided in the Landlord's verbal testimony. The Tenants were deemed to be served the hearing documents on March 18, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

The Landlord appeared, gave affirmed testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

Is the Landlord entitled to an Order of Possession Under Section 55 of the *Residential Tenancy Act* and is she entitled to a Monetary Order for unpaid rent and to recover the cost of the filing fee from the Tenants under sections 38,67, and 72 of the *Act*?

Background and Evidence

The month to month verbal tenancy began on October 1, 2007 and ended on May 25, 2009. Rent was payable in the amount of \$1,550.00 and the Tenants paid a security deposit of \$775.00 on September 10, 2007.

A 10 Day Notice to End Tenancy was issued on May 11, 2009 for \$2,200.00 of unpaid rent and was served personally by the Landlord to the Female Tenant at the rental unit on May 11, 2009. The rental arrears consist of \$200.00 from November 2008, \$150.00 for January 2009, \$250.00 for March 2009, \$50.00 for April 2009, and \$1,550.00 for May 2009.

The Landlord testified that the Tenants were still living at the rental unit on May 22, 2009 but that when the Landlord attended the rental unit on May 25, 2009 she found that the Tenants had abandoned the rental unit. The Landlord has withdrawn her request for an Order of Possession as she has regained possession of the rental unit.

In completing the application for dispute resolution, the Landlord wrote in the Details of the Dispute section "Not paying rent money & Damage the House." The Landlord advised that she has not received all of the invoices for the cost of repairs so the Landlord decided to withdraw her request for damages at this time and will submit a claim for damages at a later date.

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. The Landlord has withdrawn her application for an Order of Possession as she has regained possession of the rental unit.

Claim for unpaid rent. The landlord claims for unpaid rent of \$2,200.00, pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due. I find that the Tenants have failed to comply with a material term of the tenancy agreement which stipulates that rent is due monthly on the first of each month.

Claim for Damages – The Landlord has withdrawn her claim for damages to the rental unit and is at liberty to reapply at a later date.

Filing Fee \$100.00. I find that the Landlord has succeeded in large and that she 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 Tenant's security deposit of \$775.00 plus interest of \$15.28 for a total of \$790.28.

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 (\$200.00 Nov/08, \$150.00 Jan/09, \$250.00 Mar/09, \$50.00 April/09, \$1,550.00 May/09)	\$2,200.00
Filing fee	100.00
Sub total (Monetary Order in favor of the landlord)	\$2,300.00
Less Security Deposit of \$775.00 plus interest of \$15.28	-790.28
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$1,509.72

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 \$1,509.72. The order must be served on the respondent Tenants 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 07, 2009.

Dispute Resolution Officer