

## **DECISION**

Dispute Codes      OPR MNR MNSD MNDC FF  
CNR

### **Introduction**

This hearing dealt with cross Applications for Dispute Resolution by the Landlords and the Tenant.

The Landlords filed to obtain an Order of Possession for unpaid rent, a Monetary Order for unpaid rent, for money owed or compensation for damage or loss under the Act, to retain the security deposit, and to recover the cost of the filing fee from the Tenant for this application.

The Tenant filed to cancel a 10 Day Notice to End Tenancy that was issued by the Landlord for unpaid rent.

Service of the hearing documents, by the Landlord to the Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on June 2, 2009. Mail receipt numbers were provided in the Landlord's verbal testimony. The Tenant was deemed to be served the hearing documents on June 7, 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 his evidence orally, in writing, and in documentary form.

The Tenant did not appear in support of her own application and in defense of the Landlord's application, despite being served with notice of this hearing in accordance with the *Residential Tenancy Act*.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

Are the Landlords 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 Act?

Is the Tenant entitled to an Order to cancel the 10 Day Notice to End Tenancy that was issued on May 18, 2009 under Section 46 of the *Residential Tenancy Act*?

Background and Evidence

The month to month tenancy began on November 1, 2008 with monthly rent payable on the 1<sup>st</sup> of each month in the amount of \$750.00. The Tenant paid a security deposit of \$375.00 on November 1, 2008.

The Landlord testified that when the Tenant failed to pay the full rent for May 2009 a 10 Day Notice to End Tenancy was served personally to the tenant, by the Landlord, in front of the rental building on May 18, 2009.

The Landlord argued that the Tenant is currently in arrears for rent in the amount of \$600.00 for May 2009, \$750.00 for June 2009, and \$750.00 for July 2009.

The Landlord advised that he attended the rental unit on Saturday July 4, 2009 and that neighbours of the Tenant advised the Landlord that they saw the Tenant moving some of her possession out during a previous evening. The Landlord advised that the Tenant has not returned the keys to him so he is still seeking an Order of Possession.

Analysis of Landlord's Application

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 Landlords have 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 \$600.00 for May 2009, \$750.00 for June 2009 and \$750.00 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* states that a landlord 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. Based on the aforementioned I will allow the Landlord's claim for unpaid rent for May and June 2009, however I will not consider at this time for a loss of rent for July 2009 as there is opportunity for the Landlord to minimize his loss and will dismiss the claim for July 2009 rent with leave to reapply.

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

**Claim to keep all or part of security deposit.** I find that the Landlords' 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 \$375.00 plus interest of \$0.94 for a total of \$375.94.

**Monetary Order** – I find that the Landlords are 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 Landlords are entitled to recover the filing fee from the Tenant as follows:

Unpaid Rent for May 2009 \$600.00 and June 2009 \$750.00	\$1,350.00
Filing fee	<u>50.00</u>
Sub total (Monetary Order in favor of the landlord)	<b>\$1,400.00</b>
Less Security Deposit of \$375.00 plus interest of \$0.94	-375.94
<b>TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD</b>	<b>\$1,024.06</b>

#### Analysis of Tenant's Application

Section 61 of the *Residential Tenancy Act* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the Director must determine if the hearing is to be oral or in writing. In this case, the hearing was scheduled for an oral teleconference hearing.

In the absence of the applicant Tenant, the telephone line remained open while the phone system was monitored for ten minutes and no one on behalf of the applicant Tenant called into the hearing during this time. Based on the aforementioned I find that the Tenant has failed to present the merits of her application and the application was dismissed.

#### 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 Landlords' monetary claim. A copy of the Landlords' decision will be accompanied by a Monetary Order for \$1,024.06. The order must be served on the respondent Tenant and is enforceable through the Provincial Court as an order of that Court.

**I HEREBY DISMISS** the Tenant's application, without leave to reapply.

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 08, 2009.

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Dispute Resolution Officer