

DECISION

Dispute Codes OPR MNR MNSD 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, 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 June 25, 2009 to each Tenant. The Canada Post tracking numbers were provided in the Landlord's documentary evidence. The Tenants are deemed to be served the hearing documents on June 30, 2009, the fifth day after they were mailed as per section 9(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.

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 *Act*?

Background and Evidence

The tenancy was a fixed term commencing on May 7, 2009 and scheduled to end on May 31, 2010. The Tenants paid a security deposit in the amount of \$1,250.00 on May 26, 2009 in cash, after their cheque was returned NSF. Rent in the amount of \$2,500.00 is payable on the first of each month.

The Landlord testified that the Tenants failed to pay the rent on June 1, 2009 so on June 16, 2009 the Landlord issued a 10 Day Notice to End Tenancy and served the

Male Tenant personally with the 10 Day Notice to End Tenancy on June 16, 2009 at 10:00 p.m. at the rental unit.

The Landlord argued that the Tenants have not made any payments towards rent since being served with the 10 Day Notice and that he is seeking an Order of Possession and a Monetary Order for June 2009 rent and to recover the cost of the filing fee.

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. 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 \$2,500.00 for June 2009, 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 term of the tenancy agreement which stipulates that rent is due monthly on the first of each month.

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 \$1,250.00 plus interest of \$0.00 for a total of \$1,250.00

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 June 2009	\$2,500.00
Filing fee	50.00
Sub total (Monetary Order in favor of the landlord)	\$2,550.00
Less Security Deposit of \$1,250.00 plus interest of \$0.00	-1,250.00
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$1,300.00

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 \$1,300.00. 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 14, 2009.

Dispute Resolution Officer