

DECISION

Dispute Codes OPR 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 a Monetary Order for unpaid rent, to keep all or part of the security and pet deposit, for money owed or compensation 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 hearing documents, by the Landlord to the Tenant, was done in accordance with section 89 of the *Act*, served personally by the Property Manager on June 16, 2009 at 6:45 p.m. with the Tenant at the rental unit.

Both the Landlord and Property Manager appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

The Tenant did not appear at the hearing despite being served notice of the hearing in accordance with the *Residential Tenancy Act*.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

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

Background and Evidence

The month to month tenancy began on September 1, 2007 and the current monthly rent is due on the first of each month in the amount of \$800.00. The Tenant paid a security deposit of \$370.00 and a pet deposit in the amount of \$200.00 on approximately August 29, 2007.

The Landlord advised that after receiving my written decision from their May 22, 2009 hearing, the Tenant still refused to pay the outstanding rent of \$327.69 which was outstanding from April 2009. The Landlord issued another 10 Day Notice to End Tenancy for the April 2009 unpaid rent of \$327.69 on June 8, 2009 and this notice was served personally to the Tenant by the Property Manager on June 8, 2009 at the rental unit.

The Property Manager testified that the Tenant has also failed to pay the \$800.00 July 2009 rent. The Landlord is seeking an Order of Possession for as soon as possible and a Monetary Order for the outstanding rent of \$1,127.69 and the \$50.00 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 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 \$327.69 for April 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 find that the Landlord has proven the test for loss and I hereby approve their claim for \$1,127.69 in unpaid rent.

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

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 \$370.00 and pet deposit of \$200.00 plus interest of \$11.52 for a total of \$581.52

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 (\$327.69) and July 2009 (\$800.00)	\$1,127.69
Filing fee	<u>50.00</u>
Sub total (Monetary Order in favor of the landlord)	\$1,177.69
Less Security & Pet Deposit of \$570.00 plus interest of \$11.52	-581.52
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$596.17

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 Landlord's monetary claim. A copy of the Landlord's decision will be accompanied by a Monetary Order for \$596.17. The order must be served on the Respondent Tenant 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 24, 2009.

Dispute Resolution Officer