

DECISION

Dispute Codes OPR MNR 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 to each Tenant via registered mail on July 17, 2009. The Canada Post tracking numbers were provided in the Landlord's verbal testimony. The Tenants are deemed to be served the hearing documents on July 22, 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.

No one on behalf of the Tenants appeared, despite being served with notice of today's hearing in accordance with the *Residential Tenancy Act*.

All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

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

Background and Evidence

The tenancy began as a fixed term tenancy on August 1, 2006 and switched over to a month to month after the fixed term expired on July 31, 2007. Rent is payable on the first of each month in the amount of \$700.00 and the Tenants paid a security deposit in the amount of \$350.00 on July 22, 2006.

The Landlord advised that when the Tenants failed to pay the July 2009 rent a 10 day Notice to End Tenancy was posted on the Tenants' door on July 5, 2009 listing an outstanding rent amount of \$725.00 which represents the \$700.00 rent and a \$25.00 late payment fee which is listed in the tenancy agreement.

The Landlord advised that the Tenant's paid the July rent and late payment fee on July 17, 2009 and the Landlord issued a receipt with "use and occupancy only" written on the receipt .

The Landlord testified that he is withdrawing his monetary claim for unpaid rent but that he is still requesting an Order of Possession upon 2 days of service and a monetary order to recover the cost of the filing fee. The Landlord argued that the Tenants have requested to stay in the rental unit and that the Landlord would like to accommodate their request if the Tenants are able to pay the rent when it is due. The Landlord stated that if the Tenants fail to pay the August 2009 rent on time then he will serve them with the Order of Possession if one is granted here today.

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 Landlord 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 withdrew his claim for unpaid rent.

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

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 to recover the filing fee. A copy of the Landlord's decision will be accompanied by a Monetary Order for \$50.00. 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 28, 2009.

Dispute Resolution Officer