

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, a Monetary Order for unpaid rent, and to recover the cost of the filing fee.

Service of the hearing documents was done in accordance with section 89 of the *Act*, sent via registered mail on June 17, 2009 and July 17, 2009. The Canada Post tracking numbers were provided in the Landlord's documentary evidence. The tenant is deemed to be served the hearing documents on June 22, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

The Landlord's Agent appeared, gave affirmed testimony, was provided the opportunity to present their 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 and a Monetary Order under sections 55, 67, and 72 of the *Residential Tenancy Act*?

Background and Evidence

The month to month tenancy began on February 22, 2009 and ended on approximately June 28, 2009. Rent was payable on the first of each month in the amount of \$1,000.00.

The Landlord testified that at the onset of the tenancy he collected first and last month's rent from the Tenant and the Landlord did not collect a security or a pet deposit from the Tenant.

The Landlord argued that when the Tenant failed to pay June 2009 rent a 10 Day Notice to End Tenancy was posted to the Tenant's door, by the Landlord's Agent, on June 8, 2009.

The Landlord advised that on June 24, 2009 the Landlord posted a 24 hour notice to enter the rental unit for inspection and requested that the Tenant call the Landlord. The Landlord entered the rental unit on June 25, 2009, after knocking, and upon entering was advised by the Tenant that he was vacating the rental unit. The Landlord stated that he saw a bleach stain on the carpet and asked the Tenant what happened and the Tenant told the Landlord that he was cleaning and dropped the cleaning solution on the carpet and it bleached the carpet. The Landlord said that he told the Tenant that he would be responsible for paying for the repair of the carpet.

The Landlord testified that he followed the Tenant when he was moving out on June 28, 2009 and was able to acquire the Tenant's new address for service of the hearing documents. The Landlord supported his claim by providing documentary evidence as proof of receipt of documents served via registered mail to the Tenant at the new address.

The Landlord has withdrawn his request for an Order of Possession as the Tenant has vacated the rental unit.

The Landlord is seeking loss of rent for July, 2009 as they were not able to re-rent the unit until August 1, 2009. The Landlord argued that they placed the unit on Craig's List as soon as they new the Tenant had vacated the rental unit but that everyone wants to rent places on the 1st of each month so they were not successful in re-renting the unit for a date in July 2009.

The Landlord advised that because he had collected the first and last month's rent at the onset of the tenancy he used the last month rent towards June 2009 rent.

The Landlord provided an estimate for the cost to repair the carpet and is claiming \$1,020.00 to repair the carpet. The Landlord testified that as of today's date he has not replaced the carpet.

Analysis

I find that in order to justify payment of damages under sections 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. It is important to note that in a claim for damage or loss under the *Act*, the party claiming the damage or loss, in this case the Landlord, bears the burden of proof and the evidence furnished by the Applicant Landlord must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the *Act* or agreement
3. Verification of the Actual amount required to compensate for loss or to rectify the damage
4. Proof that the claimant followed section 7(2) of the *Act* by doing whatever is reasonable to minimize the damage or loss

In regards to the Landlord's right to claim damages from the Tenant, Section 7 of the *Act* states that if the landlord or tenant does not comply with this *Act*, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the *Act* grants a Dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

Order of Possession – The Landlord has withdrawn his request for an Order of Possession.

Claim for Loss of Rent. The landlord claims for loss of rent of \$1,000.00 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, and by vacating the rental unit after being issued the 10 Day Notice to End Tenancy, the Tenant has caused the Landlord to suffer a loss for July 2009 rent. I also find that the Landlord mitigated his losses by renting the unit as soon as possible, after advertising the unit for rent in compliance with section 7 of the *Act*. Based on the aforementioned I find that the Landlord has proven the test for damage or loss as listed above and I approve his claim for loss of July 2009 rent.

Repair Costs to Carpet – The Landlord provided an estimate of the cost to repair the carpet and testified that he has not completed the repair to the carpet as of yet. Based on the aforementioned I find that the Landlord has failed to prove the test for damage or loss and I hereby dismiss the Landlord's claim, 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.

I must note that the Landlord breached section 19 of the *Residential Tenancy Act* when he collected an amount equal to a full month's rent and called it "last month's rent" and I

determined that the Tenant's June 2009 rent was paid by the funds collected at the onset of the tenancy.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that the Landlord is entitled to recover the filing fee from the Tenant as follows:

Loss of Rent for July 2009	\$1,000.00
Filing fee	<u>50.00</u>
TOTAL AMOUNT DUE TO THE LANDLORD	\$1,050.00

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 \$1,050.00. The order must be served on the respondent 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 29, 2009.

Dispute Resolution Officer