

## **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, a Monetary Order for unpaid rent, to keep all of the security deposit, and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents was done in accordance with section 89 of the *Act*, served personally by the Landlord to the Tenant on July 16, 2009 at the rental unit in the presence of the Landlord's husband.

The Landlord 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 38, 55, 67, and 72 of the *Residential Tenancy Act*?

### Background and Evidence

The Tenant's tenancy began on December 1, 2007 in unit 401B until June 4, 2009 at which time the Tenant moved into unit 602 in the "A" building, signed a new month to month tenancy agreement and paid a new security deposit of \$462.50. Rent was payable on the first of each month in the amount of 935.00.

The Landlord testified that the Tenant moved out of the rental unit on July 20, 2009 after being served a 10 Day Notice to End Tenancy for unpaid rent. The Landlord stated that the 10 Day Notice was posted on the Tenant's door on July 7, 2009 after receiving notification that the Tenant's July 2009 rent payment was being returned NSF.

The Landlord has withdrawn her request for an Order of Possession, as the Tenant vacated the rental unit, and the Landlord wishes to proceed with her monetary claim. The Landlord claimed \$50.00 for June 2009 but could not provide testimony or evidence to prove if the \$50.00 for June was for unpaid rent or other fees. In the absence of evidence to support her claim the Landlord withdrew her claim for \$50.00 for June 2009.

The Landlord is seeking \$935.00 for July 2009 rent as the Tenant's cheque was returned NSF, \$25.00 in late payment fees, and \$25.00 for NSF charges as provided for in the Tenancy agreement.

The Landlord testified that the rental unit has been re-rented as of August 1, 2009 so she has withdrawn her request for loss of future rent.

### 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** – The Landlord withdrew her application for an Order of Possession as the Tenant vacated the rental unit.

**Claim for Unpaid Rent** - The Landlord claims for unpaid rent of \$935.00 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.

**Late Fee and NSF Fee** – The Landlord has claimed a total of \$50.00 for NSF and Late payment fees for July 2009 rent. Section 7 of the *Residential Tenancy Regulation* allows for a Landlord to charge \$25.00 for a late payment fee and a NSF fee if the tenancy agreement provides for such fees. I find that the Tenant's tenancy agreement does provide for these fees and I hereby approve the Landlord's claim of \$50.00

**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 \$462.50 plus interest of \$0.00 for a total of \$462.50.

**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 July 2009	\$935.00
July Late Payment and NSF Fees	50.00
Filing fee	50.00
Sub total (Monetary Order in favor of the landlord)	<b>\$1,035.00</b>
Less Security Deposit of \$462.50 plus interest of \$0.00	-462.50
<b>TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD</b>	<b>\$572.50</b>

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 \$572.50. 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: August 26, 2009.

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Dispute Resolution Officer