

DECISION

Dispute Codes OPR MND MNR MNSD MNDC 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, for damage to the unit, to keep all or part of the security deposit, for money owed or compensation for damage or loss under the Act, and to recover the cost of the filing fee from the Tenants.

The Maintenance Person testified that service of the hearing documents was done in accordance with section 89 of the *Act*, served personally to both Tenants by the Maintenance Person at the rental unit on July 15, 2009.

The Landlord appeared, gave affirmed testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form. The Tenants failed to attend despite being served notice of today's hearing in accordance with the 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 January 1, 2009 and expired on June 30, 2009 at which time it switched to a month to month tenancy. The tenants paid a security deposit in the amount of \$550.00 on December 30, 2008 and rent in the amount of \$1,100.00 was payable on the first of each month.

The Landlord testified that when the Tenants failed to pay the July 2009 rent a 10 Day Notice to End Tenancy listing a move out date of July 15, 2009, was issued by the Landlord and served personally to the Female Tenant on July 6, 2009 at 1:42 p.m. The landlord testified that the Tenants are currently in arrears for July rent in the amount of \$1,100.00.

The Landlord argued that the Tenants failed to communicate their intentions to her so on August 5, 2009 a notice of inspection was posted to the Tenants' door and the Landlord entered the rental unit on August 10, 2009 at 2:00 p.m. to find that the Tenants had vacated the rental unit and left the keys on the stove. The Landlord stated that she was withdrawing her application for an Order of Possession as she has regained possession of the rental unit.

The Landlord referred to her picture evidence and a copy of the inspection report and advised that a move-out inspection was conducted on August 10, 2009 in the absence of the Tenants. The Landlord argued that the Tenants left the rental unit dirty and damaged and submits a monetary claim in the amount of \$1,770.99.

The Landlord testified that it took her maintenance staff 27 hours to clean the entire rental unit at \$11.00 per hour; 6 hours to repair holes in the wall, install pieces of drywall, sand and paint at \$40.00 per hour, replace a broken door at a cost of \$102.14 which includes taxes, and a \$5.00 landfill charge to remove the waste left by the Tenants.

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 Landlords right to claim damages from the Tenants, 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 her request for an Order of Possession.

Claim for unpaid rent. The landlord claims for unpaid rent of \$1,100.00 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 Tenants have 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 as listed above and I hereby approve their claim for unpaid rent.

Cleaning- The Landlord claims 27 hours for cleaning the rental unit at \$11.00 per hour stating that it was an employee of the Landlord who cleaned the rental unit. Based on the evidence and testimony before me I find that the Landlord has proven the test for damage and loss and I hereby approve their claim in the amount of \$297.00. (\$27.00 x \$11.00)

I note that the Landlord submitted an invoice that the Landlord issued to the Tenant whereby the Landlord charged GST. I note that the Landlord has not paid GST on this claim and as such has not suffered a loss. GST is only considered in a claim where a Landlord is able to prove that the Landlord was required to pay the GST to another service provider.

Wall Repairs – The Landlord has claimed \$252.00 for patching, mudding, sanding, and painting the damaged walls. The evidence supports that there was damage to the walls and the Landlord has testified that it took six (6) hours to repair the walls. I find that the Landlord has proven the test for damage and loss and I hereby approve her claim in the amount of \$150.00 (6 hours x \$25.00).

Damaged Door – The evidence supports the Landlord's claim that the bathroom door was damaged and had to be replaced at a cost of \$102.14. I find that the Landlord has proven her claim for damage and I approve her claim in the amount of \$102.14.

Waste Removal – I find that the Landlord has proven her claim for waste removal and I approve the claim in the amount of \$5.00.

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

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 July 2009	\$1,100.00
Cleaning costs	297.00
Wall repairs	150.00
Bathroom door replaced	102.14
Waste removal	5.00
Filing fee	50.00
Sub total (Monetary Order in favor of the landlord)	\$1,704.14
Less Security Deposit of \$550.00 plus interest of \$0.05	-550.05
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$1,154.09

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 \$1,154.09. 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: September 02, 2009.

Dispute Resolution Officer