

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*, sent via registered mail on July 17, 2009. The Canada Post tracking number was provided in the Landlord's verbal testimony. The Tenant is 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.

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 was for a fixed term commencing on November 16, 2008 and scheduled to expire on November 30, 2009. The tenant paid a security deposit in the amount of \$400.00 on October 29, 2008 and the monthly rent was payable on the first of each month in the amount of \$800.00.

The Landlord testified that the Tenant failed to pay the July rent on time a 10 Day Notice to End Tenancy listing a move out date of July 13, 2009, was issued by the Landlord and posted to the Tenant's door on July 3, 2009.

The Landlord advised that the Tenant vacated the rental unit on approximately July 25, 2009 at which time the Landlord began to advertise the unit to re-rent it. The Landlord has withdrawn his application for an Order of Possession as the Landlord has regained possession of the unit.

The Landlord testified that the unit was re-rented effective September 1, 2009 for a monthly rent of \$750.00.

The Landlord is seeking to retain the security deposit, unpaid rent for July 2009 in the amount of \$800.00, loss of rent for August 2009 of \$800.00, and to recover 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.

Order of Possession – The Landlord has withdrawn his request for an Order of Possession.

Claim for unpaid rent and loss of rent - The landlord claims for unpaid rent of \$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.

Section 45 of the Act states that a tenant cannot cancel a fixed term tenancy prior to the expiry date while section 7 states that a landlord must do whatever is reasonable to minimize their loss. I find that the Landlord suffered a loss of rent for August 2009 and that the Landlord mitigated his losses as he re-rented the unit effective September 1, 2009 at a lower monthly rent.

I find that the Landlord has proven his claims for unpaid rent for July 2009 and loss of rent for August 2009 and that the Landlord is entitled to a monetary claim in the amount of \$1600.00 (2 x \$800.00).

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

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	\$800.00
Loss of rent for August 2009	800.00
Filing fee	<u>50.00</u>
Sub total (Monetary Order in favor of the landlord)	\$1,6050.00
Less Security Deposit of \$400.00 plus interest of \$1.05	-401.05
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$1,248.95

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 \$1,248.95. 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 03, 2009.

Dispute Resolution Officer