

DECISION

Dispute Codes OPR O MNR MND FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the Tenant and the Landlord.

The Landlord file to obtain an Order of Possession for unpaid rent, a Monetary Order for unpaid rent, for damage to the unit, costs to clean up the unit, and to recover the cost of the filing fee from the Tenant for this application.

The Tenant filed to obtain an Order to cancel a Notice to End Tenancy issued for cause.

Service of the hearing documents, by the Landlord to the Tenant, was done in accordance with section 89 of the *Act*, served personally by the Landlord to the Tenant on August 6, 2009 at the rental unit in the presence of a witness.

The Landlord and the Landlord's Agent appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

The Tenant did not appear despite filing her own application for dispute resolution and despite being served notice of the Landlord's application in accordance with the *Act*.

All of the testimony and documentary evidence was carefully considered.

Preliminary Issues:

The Landlord advised that he had filed an amended application on September 3, 2009 and the Landlord served the Tenant with a copy of this amended claim by putting it in the Tenant's mailbox.

The Landlord's Agent testified that she also filed an amended application on behalf of the Landlord which was served to the Tenant via registered mail on September 3, 2009.

After a review of the amended applications I determined that the Landlord's amended application of September 3, 2009 was not served to the Tenant in accordance with section 89 of the Act and could not be considered if the Landlord wished to proceed with a monetary claim. The Agent's amended application was not served to the Tenant in time for today's hearing because the Tenant would not be deemed to have received the registered mail until September 8, 2009, five days after it was mailed as per section 90 of the Act.

Based on the above information the Landlord and his Agent withdrew their amended applications from September 3, 2009 and wished to proceed with the Landlord's application from August 5, 2009 with one request to amend the application to include the Landlord's Agent's name in the application. Based on the above I hereby approve the Landlord's request to include his Agent's name in his application, as by doing so would not prejudice the Tenant in this proceeding.

Issues(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*?

Is the Tenant entitled to an Order under section 47 of the *Residential Tenancy Act*?

Background and Evidence

Landlord's Application

The month to month tenancy began on August 15, 2009 with rent payable on the first of each month in the amount of \$725.00. The Landlord advised that the Tenant failed to pay a security deposit.

The Landlord testified that he did not have a written tenancy agreement with the Tenant but that their tenancy was based on a verbal agreement.

The Landlord argued that the Tenant failed to pay rent for July 2009 so on July 19, 2009 at 9:30 p.m. the Landlord personally served a 10 Day Notice to End Tenancy to the Tenant for unpaid rent. The Landlord testified that the Tenant has failed to pay rent for August and September 2009.

Upon review of the Landlord's August 5, 2009 application the Landlord withdrew his claims for damages to the rental unit and other losses and is currently seeking an Order of Possession and a monetary claim for unpaid rent for July 2009 and August 2009 in the amount of \$1,450.00, and to recover the \$50.00 cost for the filing fee of this application.

Tenant's Application

There was no additional evidence or testimony provided in support of the Tenant's claim as no one attended on behalf of the Tenant.

Analysis

Landlord's Application

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.

A "**tenancy agreement**" means an agreement, whether written or oral, expressed or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental

unit. I find that based on the above definition, oral terms contained in, or form part of, tenancy agreements and may still be recognized and enforced.

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 Tenant failed to pay the rent within 5 days after receiving this notice, and that the Tenant is 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 claims for unpaid rent of \$725.00 for July 2009 and \$725.00 for August 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. The Landlord has proven the test for loss as listed above and I hereby approve his claim for \$1,450.00 of 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 Tenant.

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:

Unpaid Rent for July 2009 and August 2009 (\$725.00 x 2)	\$1,450.00
Filing fee	50.00
TOTAL AMOUNT DUE TO THE LANDLORD	\$1,500.00

Tenant's Application

Section 61 of the *Residential Tenancy Act* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the Director must determine if the hearing is to be oral or in writing. In this case, the hearing

was scheduled for an oral teleconference hearing. In the absence of the Applicant Tenant, the telephone line remained open while the phone system was monitored for ten minutes and no one on behalf of the Applicant Tenant called into the hearing during this time. Based on the aforementioned I find that the Tenant has failed to present the merits of her application and the application was dismissed.

Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenant**. This order must be served on the Respondent 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. A copy of the Landlord's decision will be accompanied by a Monetary Order for \$1,500.00. The order must be served on the Respondent Tenant and is enforceable through the Provincial Court as an order of that Court.

I HEREBY DISMISS the Tenant's application, without leave to reapply.

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 11, 2009.

Dispute Resolution Officer