

DECISION

Dispute Codes OPR 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, money owed for damage or loss under the Act, to keep the security deposit in partial satisfaction of the claim, and to recover the cost of the filing fee from the Tenants 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 Tenants at the rental unit on October 21, 2009.

The Landlord appeared, gave affirmed testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form. No one attended the hearing on behalf of the Tenants, despite being served notice of the hearing in accordance with the Residential Tenancy Act (Act).

All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

Is the Landlord entitled to Orders under sections 38, 55, 67, and 72 of the *Residential Tenancy Act*?

Background and Evidence

The fixed term tenancy commenced on April 1, 2003 and switched to a month to month tenancy after March 31, 2004. The Tenants paid a security deposit in the amount of \$305.00 on March 8, 2003 and rent is payable on the first of each month in the amount of \$665.00.

The Landlord testified that the Tenants have been habitually late in paying rent. When the Tenants failed to pay the October 2009 rent in full a 10 Day Notice to End Tenancy listing a move out date of October 13, 2009, was issued by the Landlord and posted on the Tenants' door on October 2, 2009.

The Landlord argued that since the 10 Day Notice to End Tenancy was issued the Tenants made a payment towards their rent on October 22, 2009 in the amount of \$500.00 and on November 25, 2009 in the amount of \$283.00. The Landlord testified

that the Tenants were issued receipts for both the October 22, 2009 payment and the November 25, 2009, payments with “use and occupancy only” written on the receipts.

The Landlord advised that the current arrears total \$1,107.00 and is comprised of \$392.00 for November 2009 rent, \$20.00 November late fee, and \$665.00 for December 2009 rent, \$20.00 December late fee, and \$10.00 for December parking.

The Landlord testified that he wished to withdraw his request to recover the \$50.00 filing fee as the Tenants have already paid the Landlord for this 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.

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 Tenants.

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 Tenants failed to pay the rent in full within 5 days after receiving this notice, and that the Tenants are 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 \$392.00 for November 2009 and \$675.00 for December 2009 (\$665.00 + \$10.00 rental for parking), 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 and that the Landlord has proven the test for damage or loss under the *Act* and I hereby approve his claim of \$1,067.00 of unpaid rent.

Late Payment Fees. The Landlord is seeking \$40.00 for late payment fees for November and December 2009 as provided for in # 3(a) of the tenancy agreement in compliance with section 7 of the Residential Tenancy Regulation. Based on the aforementioned I find that the Landlord has proven his claim and I hereby approve his request of \$40.00 in late payment fees.

Filing Fee \$50.00. The Landlord has withdrawn his request to recover the filing fee as the Tenants have already paid this amount to the Landlord.

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 Tenants' security deposit of \$305.00 plus interest of \$10.80 for a total of \$315.80.

Monetary Order – I find that the landlord is entitled to a monetary claim as follows:

Unpaid Rent for November 2009	\$392.00
Unpaid Rent and Parking for December 2009 (\$665.00 + \$10.00)	675.00
Late Payment fees for November and December 2009 (2 x \$20.00)	<u>40.00</u>
Subtotal (Monetary Order in favor of the Landlord)	\$1,107.00
Less Security Deposit of \$305.00 plus interest of \$10.80	-315.80
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$791.20

Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenants**. This order must be served on the Tenants 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 \$791.20. The order must be served on the Tenants 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: December 03, 2009.

Dispute Resolution Officer