

DECISION

Dispute Codes OPR MNR MNDC 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, for money owed for damage or loss under the Act, and to recover the cost of the filing fee from the Tenant.

Service of the hearing documents was done in accordance with section 89 of the *Act* served personally by the Resident Manager to the Tenant on October 21, 2009 at the rental unit.

The Landlord and the Resident Manager 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 Orders under sections 55, 67, and 72 of the *Residential Tenancy Act*?

Background and Evidence

The tenancy was a month to month term commencing on April 1, 2006. The Tenant paid a security deposit in the amount of \$300.00 on March 30, 2006 and rent in the amount of \$630.00 is due on the first of each month.

The Resident Manager testified that the Tenant continuously short paid her rent and that when her September 1, 2009 cheque was returned NSF the Landlord continued to

work with her thinking she would pay her rent eventually, however the Tenant failed to pay anything since August 27, 2009 towards her outstanding rent. A 10 Day Notice to End Tenancy was issued on October 2, 2009 and was served personally to the Tenant by the Resident Manager on October 2, 2009 at the rental unit. The Resident Manager stated that she has not seen the Tenant for some time so she posted a notice to enter the rental unit and entered four days ago to find the rental unit still full of the Tenant's possessions.

The Resident Manager argued that while the Tenant made payments towards past rent, the current arrears total \$3,830.00 and is comprised of rent of \$50.00 for May 2009, and \$630.00 per month for the six months of June 2009, July 2009, August 2009, September 2009, October 2009, and November 2009.

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 - 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 \$3,830.00 for \$50.00 for May 2009 and \$630.00 for each of the six months between June 2009 and November 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 and I approve the Landlords monetary claim.

Filing Fee \$50.00- I find that the Landlord has succeeded with their application and is entitled to recover the cost of the filing fee from the Tenant.

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 \$300.00 plus interest of \$10.24 from March 30, 2006.

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 May 2009	\$50.00
Unpaid Rent for June 2009, July 2009, August 2009, September 2009, October 2009, November 2009 (6 x \$630.00)	3,780.00
Filing fee	50.00
Subtotal (Monetary Order in favor of the landlord)	\$3,880
Less Security Deposit of \$300.00 plus interest of \$10.24	-310.24
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$3,569.76

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 \$3,569.76. 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: December 04, 2009.

Dispute Resolution Officer