

DECISION

Dispute Codes OPR MNR FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for unpaid rent, a Monetary Order for unpaid rent, and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents, by the Landlord to the Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on October 22, 2009. Mail receipt numbers were provided in the Landlord's documentary evidence. The Tenant is deemed to be served the hearing documents on October 27, 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 her evidence orally, in writing, and in documentary form. The Tenant did not appear despite being served with notice of this hearing in accordance with the *Act*.

All of the testimony and documentary evidence was carefully considered.

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*?

Background and Evidence

The month to month tenancy began on September 1, 2009 with rent payable on the first of each month in the amount of \$750.00. The Tenant paid a security deposit of \$375.00 on September 4, 2009.

The Landlord's Agent (Agent) appeared and testified that when the Tenant failed to pay his October 2009 rent in full on the first of October 2009, the Landlord decided to issue the Tenant a 10 Day Notice to End Tenancy for unpaid rent. The 10 Day Notice was issued on October 6, 2009 for \$375.00 in unpaid rent and placed in the Tenant's mail box by the Agent on October 6, 2009.

The Agent argued that the Tenant has since paid the full arrears for October 2009 rent however the November 2009 rent is now outstanding. The Agent referred to the documentary evidence and a letter dated October 4, 2009 issued to the Tenant stating that the payment was received for “use and occupancy only”. The Agent could not provide testimony of the exact dates of when the Tenant paid the October 2009 rent in full.

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 failed to meet the requirements for the 10 day notice to end tenancy pursuant to section 46(1) of the *Act*, in the presence of contradictory evidence of when the Tenant paid the October rent in full. The question remains as to when the rent was paid and if the Tenant paid the rent within 5 days after receiving this notice. Based on the aforementioned I find that the Landlord has failed to prove the test for damage or loss as listed above and I hereby dismiss their request for an Order of Possession.

Claim for unpaid rent – The Agent has testified that the October 2009 rent has been paid in full which satisfies the Landlord’s claim for unpaid rent.

Filing Fee \$50.00- As the Landlord has not succeeded with their application I find that they are not entitled to recover the cost of the filing fee from the tenant.

Conclusion

The 10 Day Notice to End Tenancy for Unpaid Rent issued on October 6, 2009 is hereby cancelled and is of no force or effect.

I HEREBY DISMISS the Landlord’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: December 04, 2009.

Dispute Resolution Officer