

## **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 and a Monetary Order for unpaid rent and to recover the cost of the filing fee from the Tenants for this application.

Service of the hearing documents, by the Landlord to the Tenant, was done in person by the Landlord to Tenant number (1) on October 30, 2009 and again with an amended copy on November 2, 2009.

The Landlord appeared, 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.

### Issues(s) to be Decided

Is the Landlord entitled to an Order of Possession and a Monetary Order under sections 47, 55, 67, and 72 of the *Residential Tenancy Act*?

### Background and Evidence

The Landlord testified that he had a verbal tenancy agreement with the three Tenants and that Tenant (1) moved in on approximately June 1, 2009 and the Tenants (2) and (3) moved in sometime in August 2009. The monthly rent was \$900.00 per month and the Landlord did not collect a security deposit from any of the Tenants.

The Landlord testified that Tenant (1) moved out on approximately December 5, 2009, Tenant (2) moved out on an unknown date, and Tenant (3) moved out on approximately November 9, 2009. The Landlord confirmed that he has regained possession of the rental unit and as such has withdrawn his request for an Order of Possession.

The Landlord argued that Tenants (2) and (3) paid their rent in full prior to moving out however Tenant (1) still owed \$375.00 for November 2009.

The Landlord referred to his documentary evidence of a receipt dated October 15, 2009 where the Landlord lists receipt of \$500.00 from Tenant (1) and the receipt refers to the 10 Day Notice to End Tenancy issued October 10, 2009 and notes that the notice to end is still valid. The receipt also lists all three Tenants first name "still your rent short \$375.00 dollar".

### Analysis

I find that in order to justify payment of damages under sections 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. It is important to note that in a claim for damage or loss under the *Act*, the party claiming the damage or loss; in this case the Landlord bears the burden of proof.

The Landlord has provided documentary evidence of a copy of a 10 Day Notice to End Tenancy which was issued to what appears to be Tenant (1); however the surname is spelled incorrectly on the notice. The Notice lists Tenant's (2) and (3) first names however there is no last name listed on the 10 Day Notice issued on October 10, 2009.

I note that on the application for dispute resolution the Landlord spelled Tenant's (1) name differently than what is listed on the notice, Tenant (2) is listed without a surname, and Tenant (3) is listed with a surname. I must remind the Landlord that an application for Dispute Resolution and a 10 Day Notice to End Tenancy are legal documents and must list Tenants names correctly to be able to prove that the Tenants have been served in accordance with the *Act*.

The purpose of serving documents under the *Act* is to notify the person being served of their breach and notification of their rights under the *Act* in response. The Landlord is seeking a monetary order; however, the Landlord has the burden of proving that the Tenants were served with notice of Dispute Resolution and properly served with a legal 10 Day Notice to End Tenancy for unpaid rent.

In the presence of evidence displaying names listed without surnames and names listed with surnames being spelled differently on the 10 Day Notice to End Tenancy, I find the 10 Day Notice to End Tenancy for unpaid rent to be invalid and of no force or effect.

In the presence of a receipt displaying all three Tenants' first names and that all three owe the outstanding rent of \$375.00 I find that the Landlord has not proven his claim of unpaid rent against only Tenant (1).

Based on the above I find the Landlord has failed to prove the test for damage or loss under the Act, and I hereby dismiss his application, without leave to reapply.

As the Landlord has not been successful with his application, I decline to award him recovery of the filing fee.

Conclusion

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 11, 2009.

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Dispute Resolution Officer