

DECISION

Dispute Codes OPR MNR MNSD 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, to keep the security deposit in partial satisfaction of their claim, and to recover the cost of the filing fee from the Tenants.

Service of the hearing documents was done in accordance with section 89 of the *Act*, sent via registered mail to each Tenant on November 18, 2009. The Canada Post tracking numbers were provided in the Landlord's verbal testimony. The Tenants are deemed to be served the hearing documents on November 23, 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 his evidence orally, in writing, and in documentary form. The Tenants did not appear despite being served notice of the hearing in accordance with the *Act*.

All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession and a Monetary Order under sections 38, 55, 67, and 72 of the *Residential Tenancy Act*?

Background and Evidence

The tenancy agreement was for a fixed term commencing October 1, 2009 and set to expire on December 31, 2009. The Tenants vacated the rental unit sometime near the end of November 2009. The Tenants paid a security deposit in the amount of \$325.00 on September 25, 2009 and rent in the amount of \$650.00 was due on the first of each month.

The Landlord testified that when the Tenants failed to pay rent for November 2009 a 10 Day Notice to End Tenancy was issued and posted to the Tenant's door, by the Landlord on November 4, 2009. The Landlord is seeking the unpaid rent for November 2009 and the \$25.00 late fee as provided for in the Tenants' tenancy agreement.

The Landlord stated that he received a note from the Tenants on November 23, 2009 which stated that the keys for the rental unit were in the mail box and that the Tenants were sorry for everything. The Landlord argued that the Tenants did not inform the Landlord that they were moving prior to the Landlord receiving this note, that now the Landlord does not have a forwarding address or contact number to arrange a move-out inspection with the Tenants, nor was the Landlord able to re-rent the unit for December 2009. The Landlord is seeking \$650.00 for loss of rent for December 2009 as the unit has not yet been re-rented.

The Landlord stated that he is no longer seeking an Order of Possession as the Tenants have vacated the unit.

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 – The Landlord has withdrawn his application for an Order of Possession as the Tenants have vacated the rental unit.

Claim for unpaid rent - The Landlord claims for unpaid rent of \$650.00 for November 2009, 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.

Loss of rent – The Landlord is seeking to amend his application to include loss of rent for December 2009 given that the Landlord was not informed of the Tenants move out until near the end of November 2009. The evidence supports that the Landlord has not been able to re-rent the rental unit for December 2009 which resulted in the Landlord suffering a loss as a direct result of the Tenants' failure to comply with section 26 of the *Act*. Based on the aforementioned I find that the Landlord has succeeded in proving his loss, as listed above, and I approve his claim for \$650.00 of loss of December rent.

Late payment fees – The evidence supports that the tenancy agreement provides for the Landlord to collect late payment charges of \$25.00, in accordance with section 7 of

the Residential Tenancy Regulation. As the Tenants have been late in paying their November 2009 rent, the Landlord is entitled to claim the late payment fee.

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

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 \$325.00 plus interest of \$0.00.

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 Tenants' security deposit, and that the Landlord is entitled to recover the filing fee from the Tenant as follows:

Unpaid Rent for November 2009	\$650.00
Loss of Rent for December 2009	650.00
Late payment fee for November 2009	25.00
Filing fee	<u>50.00</u>
Subtotal (Monetary Order in favor of the Landlord)	\$1,375.00
Less Security Deposit of \$325.00 plus interest of \$0.00	-325.00
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$1,050.00

Conclusion

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 \$1,050.00. The order must be served on the respondent 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 30, 2009.

Dispute Resolution Officer