

DECISION

Dispute Codes OPR MNR 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, 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*, delivered in person by the Landlord to the Tenant on November 26, 2009 in the presence of a witness.

The Landlord appeared, gave affirmed testimony, was provided the opportunity to present her 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 agreement was established for a month to month term commencing on June 1, 2009 and ended prior to January 1, 2010. The Tenant paid a security deposit in the amount of \$587.50 and a pet deposit in the amount of \$150.00 on May 31, 2009 and rent in the amount of \$1,175.00 was due on the first of each month.

The Landlord testified that when the Tenant failed to pay rent for November 2009 a 10 Day Notice to End Tenancy was issued on November 10, 2009 with a copy posted to the Tenants' door and another copy placed in the mailbox by the Landlord, on November 10, 2009,

The Landlord stated that the Tenants vacated the rental unit prior to January 1, 2010 leaving behind a mess and garbage. The Landlord argued that the Tenants have not contacted him to complete the move out inspections that the Tenants did not provide a forwarding address, and the Tenants had left the rental unit keys in the mailbox.

The Landlord testified that he is withdrawing his request for an Order of Possession and is proceeding with a monetary claim for unpaid rent for November 2009 and December 2009, less \$160.00 paid to the Landlord on December 4, 2009, for a total amount of \$2,190.00 (\$1,175.00 x 2 - \$160.00) and \$754.02 in utilities.

Analysis

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

Order of Possession – The Landlord withdrew his application for an Order of Possession.

Claim for unpaid rent - The Landlord claims for unpaid rent for November 2009 and December 2009 in the amount of \$2,190.00 (\$1,175.00 x 2 - \$160.00) 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 I approve the Landlord's claim.

Utilities – The Landlord provided documentary evidence which proved that the cost of utilities was not included in the Tenants' tenancy agreement. The actual amount of unpaid utilities (natural gas and hydro) supported by the Landlord's evidence is \$616.52 which is comprised of \$475.08 for natural gas and \$426.44 for hydro less \$285.00 which

was previously paid by the Tenants. Based on the aforementioned I find that the Landlord has met the test for damage or loss, as listed above, and I approve his claim in the amount of \$616.52.

The Landlord has estimated the remaining claim for utilities at \$137.50. An estimated amount does not meet the test for damages. Based on the aforementioned I hereby dismiss the Landlord's claim for estimated utilities, without leave to reapply.

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

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

Unpaid Rent for November and December 2009 less payment	\$2,190.00
Unpaid utilities	616.52
Filing fee	<u>50.00</u>
Subtotal (Monetary Order in favor of the landlord)	\$2,856.52
Less Security Deposit of \$587.50 plus Pet Deposit of \$150.00 plus interest of \$0.00 from May 31, 2009	-737.50
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$2,119.02

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 \$2,119.02. 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: January 05, 2010.

Dispute Resolution Officer