

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 and a Monetary Order for unpaid rent and to recover the cost of the \$100.00 filing fee from the Tenants for this application.

Service of the hearing documents, by the Landlord to each Tenant, was done in accordance with section 89 of the *Act*, served personally by the Landlord to each Tenant at the rental unit on December 3, 2009.

The Landlord and male Tenant appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were 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

Has the Landlord proven entitlement to an Order of Possession and a Monetary Order under Sections 55, 67, and 72 of the *Residential Tenancy Act*?

Background and Evidence

The undisputed testimony was the parties entered into a written fixed term tenancy agreement effective November 1, 2009 which may continue on a year to year basis after May 31, 2010. Rent is payable on the first of each month in the amount of \$2,800.00 and a security deposit of \$1,400.00 was supposed to be paid off in twelve monthly payments of \$120.00 between November 1, 2009 and October 1, 2010, however no payments were ever made towards the security deposit.

The Landlord testified that the Tenants took possession of the rental unit on November 1, 2009 and has failed to pay November 2009, December 2009 and January 2010 rent. The Landlord argued that a 10 Day Notice to End Tenancy was issued on November 19, 2009 and was posted to the Tenants' door during the morning of November 19, 2009.

The Tenant argued that he did not see a copy of the 10 Day Notice to End Tenancy until he was served with a copy of it with the notice of dispute resolution package. The Tenant testified and confirmed that they have not made any payments towards rent or towards the security deposit as they have had a death in the family.

The Landlord is wishing to proceed with an Order of Possession as soon as possible and a Monetary Order for unpaid rent and the filing fee.

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 Tenants failed to pay the rent within 5 days after receiving this notice (either by seeing it posted to their door or after receiving a copy of it with the notice of dispute resolution on December 3, 2009), and that the Tenants are 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*. Based on the aforementioned I hereby approve the Landlord's claim for an Order of Possession.

Claim for unpaid rent. The testimony confirms that the Tenants have failed to pay rent for the months of November 2009, December 2009, and January 2010, in the amount of \$8,400.00, 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.

Filing Fee \$100.00. I find that the Landlord has succeeded with his claim and I award him recovery of the filing fee.

Monetary Order – I find that the Landlord is entitled to a monetary claim as follows:

Unpaid Rent for November 2009, December 2009, January 2010 (3 x \$2,800.00)	\$8,400.00
Filing fee	100.00
TOTAL AMOUNT DUE TO THE LANDLORD	\$8,500.00

Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenants**. This order must be served on the Respondent Tenants 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 \$8,500.00. The order must be served on the respondent 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 12, 2010.

Dispute Resolution Officer