

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.

Service of the hearing documents by the Landlord to each Tenant were served personally to an adult visiting or residing at the rental unit. The Tenant confirmed receipt of the hearing packages.

The Landlord and male Tenant appeared, 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

Is the Landlord entitled to Orders under sections 38, 55, 67, and 72 of the *Residential Tenancy Act*?

Background and Evidence

The undisputed testimony provided the fixed term tenancy began on July 17, 2009 and is set to convert to a month to month tenancy after January 31, 2010. Rent is payable on the first of each month in the amount of \$1,050.00 and the Tenants paid a security deposit of \$525.00 on July 16, 2009.

The Landlord testified that when the Tenant failed to pay November 2009 on the agreed upon date a 10 Day Notice to End Tenancy was issued and served personally to the Tenants at the rental unit on November 23, 2009.

The Landlord argued that the Tenants have failed to pay \$1050.00 for November 2009, \$1050.00 for December 2009, and \$1050.00 for January 2010 and they are seeking an order of possession for as quickly as possible.

The Tenant testified and confirmed that they have not paid their rent but that it was due to the Landlord's failure to provide them with a new dryer, new carpet, and other items such as a new fence. The Tenant argued that they were unsure how to go about getting the Landlord to supply the promised items.

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 or loss and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the Tenants.

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, 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*.

Claim for unpaid rent - The Landlord claims for unpaid rent of \$1050.00 for November 2009, \$1050.00 for December 2009, and \$1050.00 for January 2010, for a total of \$3,150.00 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 standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month.

I do not accept the Tenant's argument that his violation of not paying rent was somehow excused due to the Landlords' alleged failure to comply with an agreement to provide services. Even if the Landlord was found to be in violation of the Act, there is no provision in the Act that extends immunity for a reciprocal breach on the part of a tenant.

As per the aforementioned I find that the Landlord has proven the test for damage or loss, as listed above, and I hereby approve their claim for unpaid rent.

Late Payment Fee – The evidence before provides for the Landlord to collect \$25.00 late payment fee under section 6 of the tenancy agreement. Section 7 of the Residential Tenancy Regulation provides that a landlord may charge a late payment fee if the tenancy agreement provides for such a fee. Based on the aforementioned I find that the Landlord has proven the test for damage or loss and I hereby award their claim of \$75.00 for late payment fees from November 2009, December 2009, and January 2010 (3 x \$25.00).

Filing Fee \$50.00- I find that the Landlord has succeeded with their application and I hereby award recovery of the \$50.00 filing fee.

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 Tenants as follows:

Unpaid Rent for November 2009, December 2009, January 2010 (3 x \$1,050.00)	\$3,150.00
Late payment fees (3 x \$25.00)	75.00
Filing fee	50.00
Subtotal (Monetary Order in favor of the landlord)	\$3,275.00
Less Security Deposit of \$525.00 plus interest of \$0.00 from July 16, 2009 to January 20, 2010	-525.00
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$2,750.00

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 **\$2,750.00**. 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: January 20, 2010.

Dispute Resolution Officer