

DECISION

Dispute Codes OPR MNR FF

Preliminary Issues

The Landlord testified that their application listed two different property management company names because as of January 1, 2010 the property management company listed as the Landlord in this style of cause took over management of this property. The Landlord confirmed that he would send in a copy of the letter sent to the Tenants advising them of the switch in property management and requested this decision be issued with the name of the new property management company.

Documentary evidence was submitted by the Landlord which confirms the change in property management; therefore I hereby approve the Landlord's request to change the style of cause to list only the current property management company name.

The Landlord could not provide testimony to explain why there are two female tenants listed on the original application for dispute resolution as these two females have nothing to do with this application. The Landlord requested that the two female names be removed from the original application and noted that they do not appear on the amended application. I hereby approve the Landlord's request to withdraw the two female names from the original application.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord seeking an Order of Possession, 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 person, by the Resident Manager, to Tenant (1). The Resident Manager provided affirmed testimony that Tenant (2) had already vacated the rental unit so both hearing packages were left with Tenant (1) at the

rental unit prior to December 25, 2009. Based on the aforementioned I find that Tenant (1) has been served with the Notice of Dispute Resolution, in accordance with the Act.

Section 88(1) of the *Residential Tenancy Act* and Section 3.1 of the *Residential Tenancy Rules of Procedures* determines the method of service for documents. The Landlords have applied for a Monetary Order which requires that the Landlords serve **each** respondent as set out under *Residential Tenancy Rules of Procedures*. In this case only one of the two Tenants has been personally served with the Notice of Direct Request Proceeding document. Therefore, I find that the request for a monetary Order against both Tenants must be amended to include only Tenant (1) who has been properly served with Notice of this Proceeding. As Tenant (2) has not been properly served the Application for Dispute Resolution as required by the Act, the monetary claim against Tenant(2) is dismissed without leave to reapply.

The Landlord and the Resident Manager appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form. Tenant (1) 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

Has the Landlord proven entitlement 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 fixed term tenancy began on May 8, 2009 and was scheduled to switch to a month to month tenancy after May 31, 2010. Rent was payable on the first of each month in the amount of \$725.00 and a security deposit of \$362.50 was paid on May 8, 2009.

The Landlord advised that when the Tenants failed to pay November 2009 rent in full and then failed to pay December 2009 rent on time, a 10 Day Notice to End Tenancy listing a move out date of December 12, 2009, was issued by the Landlord on December 2, 2009.

The Resident Manager testified that he posted the 10 Day Notice to End Tenancy on the Tenants' door on December 2, 2009.

The Landlord advised that the Tenants vacated the rental unit prior to January 1, 2010 and that they are withdrawing their request for an Order of Possession as they have regained possession of the unit.

The Landlord testified that he is seeking \$665.00 for November 2009 unpaid rent \$725 for December 2009 unpaid rent, and late payment fees of \$25.00 for each month in accordance with section 10(b) of the addendum of their tenancy agreement.

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 withdrew his request for an Order of Possession.

Claim for unpaid rent. The Landlord claims for unpaid rent of \$665.00 for November 2009 and \$725.00 for December 2009, pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due. I find that the Tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month and I hereby approve the Landlord's claim.

Late payment fees. The Landlord is claiming \$50.00 in late payment fees (\$25.00 for November and December 2009) in accordance with their tenancy agreement section 10(b). Section 7 of the Residential Tenancy Regulation provides that a landlord may charge a late payment fee if their tenancy agreement provides for the fee. Based on the aforementioned I find that the Landlord has proven his claim and I award him recovery of the late payment charges.

Filing Fee \$50.00. I find that the Landlord has succeeded with their application and I award them recovery of the 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 Tenant as follows:

Unpaid Rent for November \$665.00 + December \$725.00	\$1,390.00
Late payment fees	50.00
Filing fee	50.00
Subtotal (Monetary Order in favor of the landlord)	\$1,490.00
Less Security Deposit of \$362.50 plus interest of \$0.00	-362.50
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$1,127.50

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 **\$1,127.50**. 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 21, 2010.

Dispute Resolution Officer