

DECISION

Dispute Codes OPR MNR MNSD FF

Introduction

This was a reconvened hearing which dealt with an Application for Dispute Resolution by the Landlord seeking an Order for Possession and a Monetary Order for unpaid rent, to keep the security deposit and recovery of the filing fee. The Landlord originally applied through the direct request process which, upon review on January 05, 2010, was scheduled for a conference call hearing in accordance with section 74 of the *Residential Tenancy Act*.

Service of the rescheduled conference call hearing documents by the Landlord to the Tenant was done in person on January 14, 2009, when the Landlord hand delivered the Notice of a Dispute Resolution Hearing to the Tenant at the rental unit.

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

Issue(s) to be Decided

Has the Landlord proven entitlement to Orders under sections 38, 55, 67, and 72 of the *Residential Tenancy Act*?

Background and Evidence

The undisputed testimony was the Tenant took occupancy of the rental unit on October 1, 2009; the current Landlord purchased the property on October 15, 2009; the Tenant paid a security deposit of \$200.00 on October 1, 2009; and the current monthly rent is payable on the 1st of each month in the amount of \$450.00.

The Landlord testified that the Tenant paid \$360.00 in cash towards his December 1, 2009 rent. The Landlord argued that with rent being short paid by \$90.00 a 10 Day Notice to End Tenancy for Unpaid Rent was issued and posted to the Tenant's door on December 2, 2009.

The Landlord stated that the Tenant has failed to pay the \$450.00 owing for January 1, 2010 and that the Tenant has told the Landlord that his money was stolen so the Tenant cannot pay his rent.

The Tenant argued that he withheld \$90.00 from his December 2009 rent because the front window of the rental unit was broken and the Landlord took too long to repair the broken window. The Tenant then argued that another tenant broke his bedroom door leaving his possessions vulnerable and his January rent money was subsequently stolen.

When explaining to the Tenant that the Act requires that he pay his rent, the Tenant changed his testimony and argued that he attempted to pay his rent later in January 2010 but that the Landlord refused to take his money. Then the Tenant tried to argue that he did not receive the 10 Day Notice to End Tenancy.

Analysis

I find that in order to justify payment of damages under sections 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.

I do not accept the tenant's argument that the Tenant's violation of not paying his rent was somehow excused due to the Landlords' alleged failure to comply with the Act or agreement. 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.

Order of Possession – I have reviewed all documentary evidence and accept that the Tenant has been served with notice to end tenancy as declared by the Landlord. The notice is deemed to have been received by the Tenant on December 5, 2009, three days after it was posted to the Tenant's door, and the effective date of the notice is December 15, 2009 pursuant to section 90 of the *Act*. I accept the evidence before me that the Tenant has failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

Based on the foregoing, I find that the Tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

Claim for unpaid rent. The Landlord claims for unpaid rent of \$90.00 for December 2009 plus \$450.00 for January 2010, 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. I find that the Landlord has proven the test for loss as listed above and I hereby approve their claim for unpaid rent.

Filing Fee \$50.00 - I find that the Landlord has succeeded with their application and I hereby award 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 Tenant's security deposit, and that the Landlord is entitled to recover the filing fee from the Tenant as follows:

Unpaid Rent for December 2009	\$90.00
Unpaid Rent for January 2010	450.00
Filing fee	50.00
Subtotal (Monetary Order in favor of the Landlord)	\$590.00
Less Security Deposit of \$200.00 plus interest of \$0.00 from October 1, 2009	-200.00
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$390.00

Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenant**. This order must be served on the Respondent Tenant 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 **\$390.00**. The order must be served on the respondent Tenant 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 25, 2010.

Dispute Resolution Officer