

DECISION

Dispute Codes OPR MNR MNSD MND FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords seeking an Order of Possession for unpaid rent and a Monetary Order for unpaid rent, for damage to the unit, and to recover the cost of the filing fee from the Tenants.

The Landlord testified that service of the hearing documents was done in accordance with section 89 of the *Act*, served personally to both Tenants by the Landlord at the rental unit on December 18, 2009, in the presence of the Landlord's Partner.

The Landlord, the Landlord's Partner, and their Translator appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form. The Tenants failed to attend despite being served notice of today's hearing in accordance with the *Act*.

All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession and a Monetary Order under sections 55, 67, and 72 of the *Residential Tenancy Act*?

Background and Evidence

The month to month tenancy began on August 15, 2009 with the monthly rent payable on the 15th of each month in the amount of \$1,000.00. The Tenants paid \$470.00 towards a security deposit on August 15, 2009.

The Landlord argued that the Tenants have always paid their rent a minimum of four days late so when the Tenants failed to pay their November 15, 2009 on time the Landlords decided to issue the Tenants a 1 Month Notice to End Tenancy for Cause. The Landlord testified that he served the male Tenant with the 1 Month Notice to End Tenancy for Cause, in person at the rental unit on November 16, 2009, in the presence of the Landlord's Partner.

The Landlord testified that since issuing the above mentioned Notice the Tenants have failed to pay rent and are currently in arrears for the full rent for November 2009, December 2009, and January 2010 for a total amount of \$3,000.00.

The Landlord argued that the Tenants' tenancy does not include electricity and the Tenants have failed to put the hydro bill in their own name and have failed to pay for the costs of the hydro. The Landlord referred to his evidence of a past die hydro bill in the amount of \$149.87 for which the Landlord is seeking compensation.

The Landlord confirmed that they did not submit evidence in support of their claim of \$200.00 to repair a broken window and damages relating to opening the laundry tap.

Analysis

Given the evidence before me, in the absence of any evidence from the Tenants who did not appear despite being properly served with notice of this proceeding, I accept the version of events as discussed by the Landlord and corroborated by his Partner.

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.

Order of Possession – Upon review of the 1 Month Notice to End Tenancy for Cause, I find the Notice to be completed in accordance with the requirements of the *Act* and I

find that it was served upon the Tenants in a manner that complies with the Act. Upon consideration of all the evidence presented to me, I find the Landlord had valid reasons for issuing the Notice.

Based on the foregoing and in the absence of an application by the Tenants to dispute the Notice, I find that the Tenants are conclusively presumed under section 47(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice and I approve the Landlords' request for an Order of Possession.

Claim for unpaid rent. The Landlords claim for unpaid rent for a total of \$3,000.00 for November 2009, December 2009, and January 2010, 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 fifteenth of each month. I find that the Landlords have proven the test for loss as listed above and I hereby approve their claim for unpaid rent.

Claim for unpaid utilities. The evidence supports that the Tenants are responsible for paying for the cost of electricity and based on the Landlords' testimony I find the Tenants failed to comply with a standard term of their tenancy agreement and I consider the unpaid hydro bills as part of the Landlords' claim in accordance with section 46 (6) of the Act. Based on the aforementioned I hereby approve the Landlords' claim for \$149.87 for unpaid hydro costs.

Damage to Window and Water Tap– There is no evidence before me to support a claim for \$200.00 in damages. Therefore I hereby dismiss the Landlord's claim without leave to reapply.

Filing Fee \$50.00 - I find that the Landlords have succeeded in large therefore I award recovery of the filing fee.

Monetary Order – I find that the Landlords are 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 the Landlords are entitled to recover the filing fee from the Tenants as follows:

Unpaid rent for November 2009, December 2009, January 2010 (3 x \$1,000.00)	\$3000.00
Unpaid Hydro	149.87
Filing fee	50.00
Subtotal (Monetary Order in favor of the landlord)	\$3,199.87
Less Security Deposit of \$470.00 plus interest of \$0.00 from August 5, 2009 to January 26, 2010	-470.00
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$2,729.87

Conclusion

I HEREBY FIND that the Landlords are entitled to an Order of Possession effective two days after service on the Tenants. This order must be served on the Tenants and may be filed in the Supreme Court and enforced as an order of that Court.

I HEREBY FIND in favor of the Landlords' monetary claim. A copy of the Landlords' decision will be accompanied by a Monetary Order for **\$2,729.87**. 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 26, 2010.

Dispute Resolution Officer