DECISION

Dispute Codes   OPR MNR FF

Preliminary Issues

This application was filed listing the previous property management company as the Landlord. The current property management company attend the hearing and advised that effective January 1, 2010 they have been award the management of this rental facility.

The current Property Manager advised that all tenants were issued a notice of the change in management and offered to fax a copy of this notice to the Residential Tenancy Branch to be placed on this dispute resolution file. As the Tenant has previously been issued with this notice I allowed the Property Manager to provide the additional evidence after the hearing, in accordance with section 11.5 of the Residential Tenancy Branch Rules of Procedure, as it would not prejudice the other party.

Given the evidence before me I find that the new property management company has revisionary rights under the Act and I hereby approve their request to be named as the Landlord in this proceeding.

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 Tenant for this application.

Service of the hearing documents was done in accordance with section 89 of the *Act*, served personally by the Resident Manager to the Tenant on approximately December 21, 2009, at the rental unit.

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

No one attended the hearing on behalf of the Tenant, 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

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

Background and Evidence

The fixed term tenancy commenced on February 15, 2008 and switched to a month to month tenancy after February 28, 2009. The Tenant paid a security deposit in the amount of $385.50 on February 15, 2008 and rent is payable on the first of each month in the amount of $751.83.

The Landlord testified and referred to their evidence which included a tenant ledger which supports that the Tenant failed to pay her rent in full since October 2009. The amount outstanding as of December 31, 2009 is $1,081.64 and consists of a balance owing from October and November 2009 of 1,034.81, a payment made on December 1, 2009 of $730.00, plus December 2009 rent of $730.00. Late fees of $25.00 were also included for November and December 2009, as provided for in section 10(b) of the tenancy agreement.

The Resident Manager attended and advised that the Tenant vacated the rental sometime between December 31, 2009 and January 19, 2010. The Resident Manager argued that when he did not see the Tenant or her children around the rental unit for

awhile he posted a 24 hour notice to enter the rental unit on the door on January 19, 2010, and when he entered on January 20, 2010 he found the rental unit to be vacant.

The Property Manager confirmed that they have regained possession of the unit and that he was withdrawing his request for an Order of Possession.

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 $1,031.64 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 damage or loss under the Act and I hereby approve his claim of $1,031.64 of unpaid rent.

Late Payment Fees. The Landlord is seeking $50.00 for late payment fees for the two months of November 2009 and December 2009, as provided for in # 10(b) of the tenancy agreement. Section 7 of the Residential Tenancy Regulation provides that a Landlord may charge a late payment fee as long as the tenancy agreement provides for

such a fee. Based on the aforementioned I find that the Landlord has proven his claim and I hereby award him $50.00 in late payment fees.

Filing Fee $50.00. The Landlord has been successful with his application and I hereby award him 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 November 2009 and December 2009	$1,031.64
Late fees for November 2009 and December 2009	50.00
Filing fee	50.00
Subtotal (Monetary Order in favor of the landlord)	**$1,131.64**
Less Security Deposit of $385.50 plus interest of $5.07 from February 15, 2008 to January 27, 2010	-390.57
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	**$741.07**

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 **$741.07.** The order must be served on the respondent and is enforceable through the Provincial Court and enforced 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 27, 2010.

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Dispute Resolution Officer