

## **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, along with copies of 10 Day Notices to End Tenancy which were issued to the Tenant(s) in November 2009 and December 2009 by the previous property management company. As the tenants have previously been issued with these notices 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 Tenants for this application.

Service of the hearing documents was done in accordance with section 89 of the *Act*, served personally by the Landlord to each Tenant on December 17, 2009, via registered mail. Registered mail receipts were provided in the Landlord's documentary evidence. Each Tenant is deemed to have received the hearing documents on December 22, 2009, five days after they were mailed, in accordance with section 90 of the *Act*.

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 Tenants, 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 September 1, 2009 and was set to expire on August 31, 2010. The Tenants paid a security deposit in the amount of \$400.00 on September 1, 2009 and rent is payable on the first of each month in the amount of \$800.00.

The Landlord testified and referred to their evidence which included a tenant ledger which supports that the Tenants failed to pay their November 2009 rent in full and have not made a payment towards rent since November 20, 2009.

The Resident Manager attended the hearing and testified that a 10 Day Notice to End Tenancy was issued on November 2, 2009 and was taped to the Tenants' door on November 2, 2009. A second 10 Day Notice was issued December 2, 2009 and served personally to the Tenants by the Property Manager on either December 1<sup>st</sup> or December 2<sup>nd</sup>, 2009.

The Landlord advised that the current arrears total \$2,075.00 and is comprised of \$400.00 owing for November 2009, \$800.00 for December 2009, \$800.00 for January 2010, and three months of late fees of \$25.00 per month, as provided for in section 10(b) of the 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 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 in full within 5 days after receiving the notices, and that the Tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the notices 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 \$2,000.00 (\$400.00 for November 2009, \$800.00 for December 2009, and \$800.00 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 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 find that the Landlord has proven the test for damage or loss under the *Act* and I hereby approve his claim of \$2,000.00 of unpaid rent.

**Late Payment Fees.** The Landlord is seeking \$75.00 for late payment fees for the three months of November 2009, December 2009, and January 2010, 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 \$75.00 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 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	\$2,000.00
Late fees for November 2009, December 2009, January 2010	75.00
Filing fee	50.00
Subtotal (Monetary Order in favor of the landlord)	<b>\$2,125.00</b>
Less Security Deposit of \$400.00 plus interest of \$0.00 from September 1, 2009 to January 27, 2010	-400.00
<b>TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD</b>	<b>\$1,725.00</b>

### 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 **\$1,725.00**. 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