

DECISION

Dispute Codes OPR MNR MNSD FF

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, to keep the security deposit in partial satisfaction of their claim, and to recover the cost of the filing fee from the Tenant.

Service of the hearing documents was done in accordance with section 89 of the *Act*, sent via registered mail on December 31, 2009. The Tenant is deemed to be served the hearing documents on January 5, 2010, the fifth day after they were mailed as per section 90(a) of the *Act*.

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

All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession for unpaid rent, a Monetary Order for unpaid rent, and a Monetary Order to keep the security deposit, under sections 38, 55, and 67 of the *Residential Tenancy Act*?

Background and Evidence

The tenancy agreement was a verbal month to month tenancy commencing on November 1, 2009. The Tenant paid a security deposit in the amount of \$400.00 on November 4, 2009 and rent in the amount of \$800.00 was due on the first of each month.

The Landlord testified that when the Tenant failed to pay rent in full for November 2009 and no rent for December 2009, a 10 Day Notice to End Tenancy was issued on December 24, 2009 and served personally by the Landlord to the Tenant on December 24, 2009.

The Landlord stated that the Tenant vacated the rental unit on January 8, 2010 therefore the Landlord is withdrawing his request for an Order of Possession.

The Landlord testified that he is seeking a Monetary Order for November 2009 unpaid rent of \$300.00 and December 2009 unpaid rent of \$800.00.

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 has regained possession of the rental unit and has withdrawn his request for an Order of Possession.

Claim for unpaid rent - The Landlord claims for unpaid rent of \$300.00 for November 2009 and \$800.00 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.

Filing Fee \$50.00- I find that the Landlord has succeeded with their application and is entitled to recover the cost of the filing fee from the Tenant.

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 plus interest, and that the Landlord is entitled to recover the filing fee from the Tenant as follows:

Unpaid Rent for November 2009 \$300.00 + December 2009 \$800.00	\$1,100.00
Filing fee	50.00
Subtotal (Monetary Order in favor of the landlord)	\$1,150.00
Less Security Deposit of \$400.00 plus interest of \$0.00 from November 4, 2009 to February 8, 2010	-400.00
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$750.00

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 \$750.00. 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: February 08, 2010.

Dispute Resolution Officer