

DECISION

Dispute Codes OPR MNR MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords 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 male Landlord to the Tenant at the rental unit in the presence of the Landlord's Witness.

Both Landlords and the Landlord's Witness (Witness) appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

Are the Landlords entitled to an Order of Possession under section 55 of the *Residential Tenancy Act*?

Are the Landlords entitled to a Monetary Order under sections 38, 67 and 72 of the *Residential Tenancy Act*?

Background and Evidence

The verbal tenancy agreement was for a month to month tenancy commencing on December 15, 2008. The Tenant paid a security deposit in the amount of \$300.00 on

December 15, 2008 and based on both the Landlords' and the Witness' testimony rent is payable in the amount of \$600.00 on the first of each month.

The female Landlord testified that the tenant has failed to pay the full monthly rent and only pays \$500.00 per month instead of the \$600.00. When the Tenant continued to short pay his rent the male Landlord served the Tenant, personally, with a 10 Day Notice to End Tenancy on January 21, 2010 for an outstanding rent amount of \$1,800.00.

The Landlord argued that the Tenant refuses to pay the shortfall of rent so the Landlords are seeking to have an Order of Possession.

The Witness testified that he was in attendance when the Landlords entered into the tenancy agreement with this Tenant and he confirmed that rent is \$600.00 per month and the Tenant simply refusing to pay the full amount of rent.

Analysis

I find that in order to justify payment of damages or losses under section 67 of the *Act*, the Applicant Landlords 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 Landlords 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. I find that the Landlords have met the requirements for the 10 day notice to end tenancy pursuant to section 46(1) of the *Act*, that the Tenant failed to pay the rent, in full, within 5 days after receiving this notice, and that the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of

the notice and must vacate the rental unit to which the notice relates pursuant to section 46(5) of the *Act*. Based on the aforementioned, I hereby grant the Landlord's an Order of Possession.

Claim for unpaid rent. The Landlords application for dispute resolution lists \$3,400.00 for the accumulation of unpaid rent however the 10 Day Notice to End Tenancy demands \$1,800.00 for unpaid rent which was issued on January 1, 2010.

Section 26 of the *Act* 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 the full amount of rent is due monthly on the first of each month.

To ensure the principles of natural justice are upheld, I will accept the Landlord's claim of unpaid rent in the amount of \$1,800.00 as noted on the 10 Day Notice, which was served to the Tenant on January 21, 2010. As the Tenant has been served with the aforementioned notice in accordance with the *Act*, and I find that given the evidence before me the Landlords have proven the test for loss, as listed above and I hereby approve their claim for \$1,800.00 in unpaid rent.

Filing Fee \$50.00. I find that the Landlords have succeeded with their application therefore I award recovery of the \$50.00 filing fee.

Claim to keep all or part of security deposit. I find that the Landlords' claim meets the criteria under section 72(2)(b) of the *Act* and order this monetary claim to be offset against the Tenant's security deposit of \$300.00 plus interest of \$0.21 for a total of \$300.21.

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 Tenant's security deposit, and that the Landlord is entitled to recover the filing fee from the Tenant as follows:

Short paid rent between January 2009 to January 2010	\$1,800.00
Filing fee	50.00
Subtotal (Monetary Order in favor of the landlord)	\$1,850.00
Less Security Deposit of \$300.00 plus interest of \$0.21	-300.21
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$1,549.79

Conclusion

I HEREBY FIND that the Landlords are 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 Landlords' monetary claim. A copy of the Landlords' decision will be accompanied by a Monetary Order for **\$1,549.79**. The order must be served on the respondent 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 11, 2010.

Dispute Resolution Officer