

DECISION

Dispute Codes OPR MNR 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, and to recover the cost of the filing fee from the Tenant.

Service of the hearing documents, evidence, and request to amend the application, were served in accordance with section 89 of the *Act*, sent via registered mail on December 2, 2009, December 21, 2009, January 8, 2010, and January 28, 2010. The Canada Post tracking numbers were provided in the Landlord's verbal testimony and evidence. The Tenant is deemed to be served the hearing documents in accordance with 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 under section 55 of the *Residential Tenancy Act*?

Is the Landlord entitled to a Monetary Order for unpaid rent, under section 67 of the *Residential Tenancy Act*?

Background and Evidence

The tenancy agreement was effective November 1, 2009 for a fixed term tenancy set to switch over to a month to month tenancy after October 31, 2010. Rent was payable on

the first of each month in the amount of \$1,650.00 and the Tenant was required to pay a security deposit of \$875.00.

The Landlord testified that the Tenant issued two cheques on November 1, 2009, one for the November rent of \$1, 650.00 and the second was in the amount of \$875.00 to pay the security deposit. Both cheques were returned NSF.

When the Tenant failed to replace these NSF payments, in full, a 10 Day Notice to End Tenancy was issued on November 25, 2009 and served to an adult who appeared to reside at the rental unit. A second 10 Day Notice to End Tenancy was issued on January 28, 2010 and sent to the Tenant via registered mail.

The Landlord confirmed that a payment was received on November 30, 2009, in the amount of \$1,620.00, and was accepted for use and occupancy only as noted in the Landlord's evidence.

The Landlord is seeking \$30.00 for the balance owing of November 2009 rent, \$1,650.00 for December 2009 rent, \$1,650.00 for January 2010 rent, and \$1,650.00 for February 2010 rent for a total amount of \$4,980.00.

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 – After careful review of the evidence and testimony before me, 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 Tenant failed to pay the rent 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 approve the Landlord's request for an Order of Possession.

Claim for unpaid rent - The Landlord claims for unpaid rent of \$4,980.00 for balance owing for November 2009, and the full rent for December 2009, January 2010, and February 2010, 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; therefore I hereby approve the Landlord's claim of \$4,980.00 in unpaid rent.

Filing Fee \$50.00- I find that the Landlord has succeeded with their application and I hereby award recovery of the filing fee.

Monetary Order – I find that the Landlord is entitled to a monetary claim as follows:

Unpaid Rent for November 2009	\$30.00
Unpaid Rent for December 2009	1,650.00
Unpaid Rent for January 2010	1,650.00
Unpaid Rent for February 2010	1,650.00
Filing fee	50.00
TOTAL AMOUNT DUE TO THE LANDLORD	\$5,030.00

Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenant**. This order must be served on the Respondent 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 **\$5,030.00**. 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 12, 2010.

Dispute Resolution Officer