

DECISION

Dispute Codes OPR MNR FF ET

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 via registered mail on January 18, 2010. The Tenants are deemed to have received the hearing package on January 23, 2010, five days after they were mailed in accordance with section 90 of the *Act*.

The Landlord appeared, gave affirmed testimony, was provided the opportunity to present her 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 Residential Tenancy Act (*Act*).

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession under section 55 of the *Residential Tenancy Act*?

Is the Landlord entitled to a Monetary Order for unpaid rent and utilities under sections 67 and 72 of the *Residential Tenancy Act*?

Background and Evidence

The month to month tenancy commenced on August 14, 2006 and ended on approximately February 3, 2010. The monthly rent is subsidized and is payable on the first of each month. The current subsidized rent is \$269.00 per month. The Tenants paid a security deposit of \$284.62 on August 14, 2006 which is calculated as the amount that is equal to one half of the market value rent at August 14, 2006.

The Landlord testified that the Tenants have been late in paying their rent and natural gas costs. When the Tenants failed to pay the balance owing of \$403.00 unpaid rent and \$616.69 in unpaid utilities, which were due December 1, 2009, a 10 Day Notice to

End Tenancy listing a move out date of December 21, 2009, was issued by the Landlord and posted on the Tenants' door on December 11, 2009.

The Landlord argued that since the 10 Day Notice to End Tenancy was issued the Tenants made payments towards their rent of \$269.00 on January 12, 2010 and a payment for utilities of \$110.00 on January 7, 2010.

The Landlord confirmed that the current arrears total \$909.69 and is comprised of \$134.00 for December 2009 rent, \$269.00 for January 2010 rent, and \$506.69 of unpaid utilities. The Landlord argued that an additional \$217.08 has accumulated on the Tenant's natural gas bill however the Landlord has not yet issued the Tenant a written demand for this additional charge as the Tenants have vacated the rental unit without providing the Landlord with their forwarding address.

Analysis

All of the testimony and documentary evidence was carefully considered.

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 – The Landlord has regained possession of the rental unit on February 3, 2010 and has withdrawn her request for an Order of Possession.

Claim for unpaid rent. The Landlord claims for unpaid rent of \$134.00 for December 2009 and \$269.00 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. The Landlord has proven the test for damage or loss under the *Act* and I hereby approve his claim of \$403.00 of unpaid rent.

Unpaid Utilities - The Landlord has proven that a written demand was issued to the Tenants for \$616.69 of unpaid utilities when the 10 Day Notice to End Tenancy was issued on December 11, 2009. The Tenants paid \$110.00 on January 7, 2010 towards

this amount leaving a balance owing on the original demand for utility payment of \$506.69. The Tenants did not file a dispute against the notice and are therefore presumed to have accepted the notice. Based on the aforementioned I find that the Landlord has proven her claim for loss in accordance with section 67 of the Act and I hereby approve their claim in the amount of \$909.69 late payment fees.

Filing Fee \$50.00. The Landlord has been successful with her application and I hereby award recovery of the filing fee.

Monetary Order – I find that the Landlord's claim meets the criteria under section 72(2)(b) of the Act and order this monetary claim to be offset against the Tenants' security deposit as follows:

Unpaid Rent for December 2009	\$134.00
Unpaid Rent for January 2010	269.00
Unpaid Utilities – previously demanded in writing	\$506.69
Recovery of the filing fee	<u>50.00</u>
Subtotal (Monetary Order in favor of the Landlord)	\$959.69
Less Security Deposit of \$284.62 plus interest of \$9.19 from August 14, 2006 to February 26, 2010	-293.81
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$665.88

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 **\$665.88**. The order must be served on the Tenants 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 26, 2010.

Dispute Resolution Officer