DECISION

<u>Dispute Codes</u>   OPR MNR FF

<u>Introduction</u>

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 for this application.

Service of the hearing documents was done in accordance with section 89 of the *Act*, served personally by the Landlord to the Tenant on January 18, 2010. The Tenant signed a receipt acknowledging receipt of the hearing package.

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

<u>Issue(s) to be Decided</u>

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*?

<u>Background and Evidence</u>

The tenancy was a fixed term tenancy that began on November 1, 2008 for a fixed term and set to switch to a month to month term after April 30, 2009. Rent was payable on the first of each month in the amount of $825.00 and the Tenant paid a security deposit of $412.50 on October 14, 2008.

The landlord testified that when the Tenant failed to pay his January 2010 rent a 10 Day Notice to End Tenancy was issued and posted to the Tenant's door on January 4, 2010.

The Landlord advised that the Tenant moved out of the rental unit on March 1, 2010 and because the Landlord has regained possession of the rental unit the Landlord was withdrawing his request for an Order of Possession.

Although the Tenant is required to pay for utilities, that Landlord is seeking a monetary order for only the unpaid rent of $1,638.83 which is comprised of a balance owing of $813.83 for January 2010 and $825.00 owing for February 2010.

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 Tenant.

Order of Possession. The Landlord withdrew his request for an Order of Possession.

Claim for unpaid rent. The Landlord claims for unpaid rent of $813.83 for January 2010 and $825.00 for 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.

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

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

Unpaid Rent for January 2010 ($825.00 less credit on account of $11.17)	$813.83
Unpaid Rent for February 2010	825.00
Filing fee	50.00
Subtotal (Monetary Order in favor of the landlord)	**$1,688.83**
Less Security Deposit of $412.50 plus interest of $1.34	-413.84
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	**$1,274.99**

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 **$1,274.99**. 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: March 02, 2010.

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Dispute Resolution Officer