

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 the claim, 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 by the Landlord to the Tenant via registered mail on January 21, 2010. Canada Post tracking numbers were provided in the Landlord's verbal testimony. The Tenant is deemed to have been served the hearing documents on January 26, 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 Tenant, 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 for unpaid rent under section 55 of the *Residential Tenancy Act*?

Is the Landlord entitled to a Monetary Order a) for unpaid rent, and b) to keep the security deposit under sections 38, 67, and 72 of the *Residential Tenancy Act*?

Background and Evidence

The fixed term tenancy commenced on December 18, 2009 and is set to expire on June 30, 2010. The Tenant paid a security deposit in the amount of \$525.00 on December 14, 2009 and rent is payable on the first of each month in the amount of \$1,050.00.

The Landlord testified that when the Tenant failed to pay the January 2010 rent a 10 Day Notice to End Tenancy listing a move out date of January 14, 2010, was issued by the Landlord and one copy was placed in the Tenant's mailbox on January 4, 2010, and a second copy was placed under the Tenant's door on January 4, 2010.

The Landlord confirmed that the Tenant is still occupying the rental unit and advised they are seeking a monetary order for the unpaid rent of \$1,050.00 for January 2010, \$1,050.00 for February 2010, \$50.00 in late payment fees (\$25.00 each month) as listed in their tenancy agreement under item "6", and recovery of the \$50.00 filing fee.

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 or 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 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 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*. Therefore I approve the Landlord's request for an Order of Possession.

Claim for unpaid rent. The Landlord claims for unpaid rent of \$1,050.00 for January 2010 plus \$1,050.00 for February, 2010 rent, 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 material term of the tenancy agreement which stipulates that rent is due monthly on the first of each month and that the Landlord has proven the test for damage or loss under the *Act* and I hereby approve their claim of \$2,100.00 of unpaid rent.

Late Payment Fees. The Landlord is seeking \$25.00 for late payment fees for January 2010 and \$25.00 late payment fees for February 2010 as provided for in # 6 of the tenancy agreement, which is in compliance with section 7 of the Residential Tenancy Regulation. Based on the aforementioned I find that the Landlord has proven her claim and I hereby approve her request of \$50.00 in late payment fees.

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

Monetary Order – I find that the Landlord is entitled to a monetary claim and that 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 and February 2010 (\$1050.00 x 2)	\$2,100.00
Late Payment fee for January & February 2010 (\$25.00 x 2)	50.00
Recovery of the filing fee	50.00
Subtotal (Monetary Order in favor of the Landlord)	\$2,200.00
Less Security Deposit of \$525.00 plus interest of \$0.00	-525.00
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$1,675.00

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 Tenant 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 **\$1,675.00**. 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: March 03, 2010.

Dispute Resolution Officer