

DECISION

Dispute Codes OPR MNR MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for unpaid rent, a Monetary Order for unpaid rent, for money owed or compensation for damage or loss under the Act, Regulations, or tenancy agreement, and to recover the cost of the filing fee from the Tenants for this application.

Service of the hearing documents, by the Landlord to Tenant (1) was done in accordance with section 89 of the *Act*, served personally to the Tenant by the Landlord at the rental unit on January 27, 2010 at 3:30 p.m. Tenant (1) confirmed receipt of the hearing package and confirmed that the application should be amended to show his surname spelled without an "s" at the end of it.

The Landlord stated that he served Tenant (2) with his own hearing package and Tenant (3)'s hearing package on January 28, 2010 at 3:15 p.m. at the Tenant (2)'s place of work. The Landlord could not provide testimony to the name and address of Tenant (2)'s employer at which the service was performed.

The Landlord and Tenant (1) appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issues(s) to be Decided

Is the Landlord entitled to an Order of Possession for unpaid rent under section 55 of the *Act*?

Is the Landlord entitled to a Monetary Order a) for unpaid rent, and b) for money owed or compensation for damage or loss under the Act, Regulations, or tenancy agreement under section 67 of the *Residential Tenancy Act*?

Background and Evidence

The Landlord confirmed that he entered into a tenancy agreement with Tenant (1) effective August 1, 2009 and later that month or the next the Landlord agreed to enter into a verbal tenancy agreement with Tenant (2) and Tenant (3). The Landlord testified

that rent was payable on the first of each month and that Tenant (1)'s rent was \$300.00 per month and Tenant (2) and Tenant (3) as a couple would pay \$325.00 per month.

Both parties confirmed that Tenant (2) and Tenant (3) vacated the rental unit January 4, 2010 as a result of being issued the notice to end tenancy for unpaid rent.

The Landlord argued that Tenant (1) always paid his rent in cash and made the following payments: \$200.00 on October 27, 2009, \$150.00 on December 23, 2009, and \$300.00 on January 23, 2010. The Landlord advised that the Tenant failed to make payments towards rent during the months of November 2009, February 2010 and March 2010.

The Tenant testified that he made the following cash payments to the Landlord for rent: \$300.00 on October 27, 2009, \$200.00 at the end of November 2009, \$150.00 on December 23, 2009, and \$300.00 on January 23, 2010. The Tenant confirmed that he has not made payments to the Landlord after January 23, 2010.

Both parties confirmed that the Tenant signed the document dated January 08, 2010, provided in the Landlord's evidence which states that the Tenant owes the Landlord \$550.00 for rent for months prior to January, 2010. The Landlord confirmed that he did not provide the Tenant with written receipts for rent payments even though the Tenant paid in cash.

The Tenant confirmed that he vacated the rental unit of all of his possessions on March 6, 2010 and argued that the Landlord allowed the new tenants to move into the unit before the Tenant had vacated the unit so he should not have to pay for March 2010 rent.

The Landlord stated that he did not give the new tenants permission to move in early, that these new tenants are the people who assisted the Tenant with his move, the Landlord saw the new tenant's couches in the rental unit on March 7, 2010, and the new tenants paid the Landlord a reduced rent in the amount of \$400.00 for March 2010.

The Landlord has withdrawn his request for an Order of Possession as the previous Tenants have vacated the rental unit.

Analysis

All of the testimony and documentary evidence was carefully considered.

Based on the evidence before me I find that the three named Tenants entered into two separate verbal tenancy agreements establishing tenants in common between Tenant (1) and Tenant's (2) and (3) who were co-tenants. Tenants in common have separate tenancy agreements and are not responsible for debts or damages relating to the other tenancy. Therefore the Landlord cannot file one claim against all three Tenants as each tenancy agreement must have a separate application for dispute resolution.

As per the above the Landlord's application will be amended to remove Tenant (2) and Tenant (3)'s names and the Landlord's application against these two Tenant's is hereby dismissed with leave to reapply.

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 has withdrawn his application for an Order of Possession as the Tenants have vacated the rental unit.

Claim for unpaid rent - The Landlord claims for unpaid rent of \$850.00 which is comprised of \$100.00 for October 2009, \$300.00 for November 2009, \$150.00 for December 2009, and \$300.00 for February 2010. The Landlord also requested money for the six days the Tenant occupied the unit in March 2010, pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due. I find that Tenant (1) failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. I find that the documentary evidence supports the Landlord's testimony and based on the above I find the Landlord has met the test for loss, as listed above, and I approve his claim in the amount of \$850.00 of unpaid rent.

In the presence of contradictory testimony of when Tenant (1) vacated the rental unit and when the new tenants took possession, I deny the Landlord's request for compensation for March 2010.

Filing Fee \$50.00- I find that the Landlord has succeeded with his application therefore I award the Landlord recovery of the \$50.00 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 October 2009	\$100.00
Unpaid Rent for November 2009	300.00
Unpaid Rent for December 2009	150.00
Unpaid Rent for February 2010	300.00
Filing fee	<u>50.00</u>
Subtotal (Monetary Order in favor of the Landlord)	\$900.00
Less Security Deposit of \$140.00 plus interest of \$0.00	-140.00
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$760.00

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 **\$760.00**. The order must be served on the respondent Tenant (1) 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 10, 2010.

Dispute Resolution Officer