

## **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 their claim, and to recover the cost of the filing fee from the Tenant.

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 28, 2010, at 8:30 a.m. at the rental unit.

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

### 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 in partial satisfaction of their claim under sections 67 and 72 of the *Residential Tenancy Act*?

### Background and Evidence

The tenancy is a month to month tenancy commencing on August 1, 2008. The Tenant paid a security deposit in the amount of \$325.00 on August 27, 2008 and rent in the amount of \$650.00 is due on the first of each month.

The Landlord testified that when the Tenant failed to pay rent for January 2010, a 10 Day Notice to End Tenancy was issued on January 4, 2010 and placed under the Tenant's door at 10:00 p.m. in the presence of a witness.

The Landlord stated that the Tenant has told him that he would be moving out however the Tenant still has possessions in the rental unit and keys to access the unit.

## 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** - 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 approve the Landlord's request for an Order of Possession.

**Claim for unpaid rent** - The Landlord claims for unpaid rent of \$650.00 for January 2010 and \$650.00 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 on the first of each month. Based on the aforementioned I find that the Landlord has proven the test for loss, as listed above, and I approve his claim for unpaid rent.

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

**Monetary Order** – I find that the Landlord is entitled to a Monetary Order 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 and February 2010	\$1,300.00
Filing fee	<u>50.00</u>
Subtotal (Monetary Order in favor of the landlord)	<b>\$1,350.00</b>
Less Security Deposit of \$360.00 plus interest of \$1.26 from August 27, 2008 to March 11, 2010	-326.69
<b>TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD</b>	<b>\$1,023.31</b>

## 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 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 **\$1,023.31**. 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: March 11, 2010.

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Dispute Resolution Officer