

DECISION

Dispute Codes

OPR MNR MNSD FF

Introduction

This was a reconvened hearing which dealt with an Application for Dispute Resolution by the Landlord seeking an Order for Possession for unpaid rent, a Monetary Order for unpaid rent, to keep the security deposit, and recovery of the filing fee from the Tenant for this application. The Landlord originally applied through the direct request process which, upon review, was scheduled for a conference call hearing in accordance with section 74 of the *Residential Tenancy Act*.

Service of the Landlord's amended application and hearing documents was done in accordance with section 89 of the *Act*, sent via registered mail on February 09, 2010. Copies of the Canada Post receipts were provided in the Landlord's evidence. The Tenant is deemed to have received the amended application and hearing documents on February 14, 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 67 and 72 of the *Residential Tenancy Act*?

Background and Evidence

The fixed term tenancy commenced on July 1, 2009 and is set to expire on June 30, 2010. The Tenant paid a security deposit in the amount of \$525.00 on June 30, 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 her December 2009 and January 2010 rent a 10 Day Notice to End Tenancy listing a move out date of January 21, 2010, was issued by the Landlord and posted on the Tenant's door on January 12, 2010.

The Landlord advised that the total current arrears are \$4,250.00 which consists of \$1050.00 for December 2009, \$1050.00 for January 2010, \$1050 for February 2010, \$1050.00 for March 2010, plus \$50.00 late fees at \$25.00 for each December 2009 and January 2010. Late fees are not being claimed by the Landlord for February 2010 or March 2010. The late fee is provided for in section 44 of the Tenant's tenancy agreement. The Landlord has also requested \$1050.00 for payment towards April 2010 rent.

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. 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*.

Claim for unpaid rent. The Landlord claims for unpaid rent of \$4,200.00 for \$1050.00 for December 2009, plus \$1050.00 for January 2010, plus \$1050.00 for February 2010, and \$1050 for March 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 and that the Landlord has proven the test for damage or loss under the *Act*.

The Landlord is also seeking \$1050.00 for April 2010 rent. I find that the Landlord is required to mitigate their losses and attempt to re-rent the unit as quickly as possible. I find the Landlord's claim for April rent to be premature therefore I dismiss the Landlord's claim for April 2010 rent, with leave to reapply

Late Payment Fees. The Landlord is seeking \$50.00 for late payment fees for \$25.00 in December 2009 and \$25.00 in January 2010, as provided for in # 44 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 \$100.00. The Landlord has been successful with her application and I find that she is entitled to recover the \$100.00 filing fee from the Tenant. I note that the Landlord amended her application to an amount over \$5,000.00 which required that she pay an additional \$50.00 to bring the filing fee to \$100.00.

Claim to keep all or part of security deposit. 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 Tenant's security deposit of \$525.00 plus interest of \$0.00.

Monetary Order – I find the Landlord is entitled to a monetary claim as follows:

Unpaid Rent for December 2009, January 2010, February 2010, and March 2010 (4 x \$1,050.00)	\$4,200.00
Late Payment fee for December 2009 and January 2010 (2 x \$25)	50.00
Recovery of the filing fee	<u>100.00</u>
Subtotal (Monetary Order in favor of the Landlord)	\$4,350.00
Less Security Deposit of \$525.00 plus interest of \$0.00	-525.00
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$3,825.00

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 **\$3,825.00**. The order must be served on the 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 16, 2010.

Dispute Resolution Officer