

## **DECISION**

Dispute Codes      OPR MNR MNSD 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 or utilities, to keep all or part of the security or pet deposits, for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement, and to recover the cost of the filing fee from the Tenant for this application,

Service of the hearing documents, by the Landlord to the Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on January 14, 2010. Mail receipt numbers were provided in the Landlord's evidence and the Landlord provided testimony that the package was signed for by the Tenant on February 15, 2010 at 16:32 hrs.

The Landlord appeared, gave affirmed testimony, was 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 pursuant to section 55 of the *Residential Tenancy Act*?

Is the Landlord entitled to a Monetary Order a) for unpaid rent or utilities, and b) to keep all or part of the security or pet deposits, and c) for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement pursuant to sections 38, 67, and 72 of the *Residential Tenancy Act*?

### Background and Evidence

The Landlord testified the month to month tenancy began on May 1, 2008. The monthly rent is payable on the first of each month in the amount of \$1,037.00 and the Tenant paid a security deposit of \$500.00 on May 1, 2008.

The Landlord advised that when the Tenant failed to pay her January 2010 rent a 10 Day Notice to End Tenancy for unpaid rent was posted to the Tenant's door on January 14, 2010 in the afternoon.

The Landlord argued the Tenant has made payments on February 11, 2010 of \$1,000.00 and March 8, 2010 of \$1,074.00 towards past due rent, that receipts for "use and occupancy only" were issued, and that the Tenant is still in arrears for March 2010 rent of \$1,037.00.

### 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 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 \$1,037.00 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.

**Filing Fee \$50.00.** I find that the Landlord has succeeded in large and I award recovery of the filing fee.

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

security deposit, and that the Landlord is entitled to recover the filing fee from the Tenant as follows:

Unpaid Rent for March 2010	\$1,037.00
Filing fee	50.00
Subtotal (Monetary Order in favor of the landlord)	<b>\$1,087.00</b>
Less Security Deposit of \$500.00 plus interest of \$5.02 from May 1, 2008 to March 30, 2010	-505.02
<b>TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD</b>	<b>\$581.98</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 **\$581.98**. 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 30, 2010.

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Dispute Resolution Officer