

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 and or utilities, to keep all or part of the pet and or security deposit, 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 Tenants for this application.

Service of the hearing documents, by the Landlord to each Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on February 15, 2010. Mail receipt numbers were provided in the Landlord's evidence. The Tenants are deemed to be served the hearing documents on February 20, 2010, the fifth day after they were mailed as per section 90(a) of the *Act*.

The Landlord appeared, 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 under section 55 of the *Residential Tenancy Act*?

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

Background and Evidence

The month to month tenancy agreement began on August 1, 2009 and the monthly rent is payable on the first of each month in the amount of \$1,150.00. The Tenants paid a security deposit of \$550.00 on August 1, 2009.

The Landlord advised the Tenants vacated the rental unit on February 28, 2010 after being served the 10 Day Notice to End Tenancy for unpaid rent and unpaid utilities on February 2, 2010.

The Landlord has withdrawn their request for an Order of Possession as they have regained possession of the unit.

The Landlord referred to the documentary evidence in support of their claim for \$752.00 in unpaid utilities as acknowledged in the Tenant's hand written letter of February, 2010.

The Landlord advised the Tenants made a payment of \$500.00 on February 5, 2010 towards February rent and are seeking a balance owing of \$750.00 in unpaid rent.

Analysis

All of the testimony and documentary evidence was carefully considered.

Order of Possession - The Landlord has withdrawn her request for an Order of Possession as they have regained possession of the unit.

Claim for unpaid rent. The Landlord claims for unpaid rent of \$750.00 for February, 2010, however the 10 Day Notice for unpaid rent shows a balance owing for February 2010 of \$1,200.00 (\$50.00 for January plus \$1150.00 for February). The Landlord testified the Tenants paid \$500.00 towards the unpaid rent on February 5, 2010, which leaves a balance owing of \$700.00, pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due. I find that the Tenants have 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 Landlord has proven the test for loss and I hereby approve their claim for unpaid rent of \$700.00.

Utilities – The evidence supports the Tenants are required to pay natural gas and electricity costs at 55% of the total invoice, in accordance with their tenancy agreement, and the Tenants acknowledged they have an outstanding balance of \$752.00 for utilities as of February 2010. Based on the aforementioned I hereby approve the Landlord's request for a monetary claim of \$752.00.

Filing Fee \$50.00 - I find that the Landlord has succeeded in large and that they should recover the filing fee from the Tenants.

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

Unpaid Rent for February 2010	\$700.00
Unpaid utilities	752.00
Filing fee	50.00
Subtotal (Monetary Order in favor of the landlord)	\$1,502.00
Less Security Deposit of \$550.00 plus interest of \$0.00	-550.00
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$952.00

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 **\$952.00**. The order must be served on the respondent 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: April 01, 2010.

Dispute Resolution Officer