

DECISION

Dispute Codes OPR MND 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 damage to the unit, site or property, for unpaid rent or utilities, to keep all or part of the security deposit, for money owed or compensation for damage or loss under the Act, and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents, by the Landlord, were served personally by the Landlord's son to the Respondent at the rental unit on approximately February 19, 2010.

The Landlord, the Landlord's Agent, the Landlord's Interpreter, and one of the co-tenants (Tenant 2) 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 *Residential Tenancy Act*?

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

Background and Evidence

The person named as the Tenant on the header of this decision will be referred as the Respondent throughout this decision.

At the onset of the hearing Tenant (2) who attended the hearing identified himself as the Respondent and took an affirmation to tell the truth.

The Landlord testified the voice he heard at the teleconference hearing was not the Respondent and was in fact Tenant (2).

When I asked Tenant (2) to identify himself and reminded him that he was under an affirmation he confirmed that he was not the Respondent and he was Tenant (2). Tenant (2) then agreed to the affirmation after identifying himself. When asked why he claimed to be the Respondent, Tenant (2) advised that the Respondent was at work and could not attend the hearing.

The Landlord and Agent testified that the verbal month to month tenancy agreement began on September 3, 2009, after the Landlord showed the Respondent the rental unit. The Landlord agreed to rent the unit to the Respondent and his mother and later found out that it was the Respondent and another male person (Tenant 2) who began to occupy the unit. Rent is payable on the first of each month in the amount of \$550.00 and the Respondent paid a security deposit of \$250.00 on approximately September 3, 2009.

The Landlord testified the September 2009, October 2009, and November 2009 rents were paid in full by cash. The Landlord advised \$300.00 was paid towards the December 2009 rent and that the Tenants requested the Landlord apply the \$250.00 security deposit towards the balance of the rent because the Respondent and Tenant (2) will be moving out at the end of December 2009. The Landlord argued that he told the Respondent and Tenant (2) that he could not use the security deposit towards their rent.

The Agent and Landlord confirmed the Respondent and Tenant (2) have failed to pay rent for January 2010, February 2010, March 2010, and April 2010. The Landlord referred to his documentary evidence in support of his testimony that a 10 Day Notice to End Tenancy for Unpaid Rent was issued and posted to the rental unit door on January 7, 2010, and a second notice was issued and posted to the rental unit door on February 1, 2010 in the presence of a witness.

Tenant (2) initially argued that he did not receive the Notice of Dispute Resolution until about one week ago when they picked up their mail. Tenant (2) later argued that the Notice of Dispute Resolution was found "sitting outside the basement". Tenant (2) also argued that he did not see either 10 Day Notice to End Tenancy for unpaid rent.

Tenant (2) testified and confirmed that he still occupies the rental unit with the Respondent and argued that they have paid their rent in full for January 2010, February

2010, and March 2010, and the payments were made in cash. Tenant (2) confirmed he did not submit evidence in support of his testimony.

The Landlord testified the 2009 rent payments were all paid in cash and he did not issue the Tenants receipts for the rent payments. The Landlord confirmed there was no rent payments received after December 2009.

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 Landlord 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 or apply to dispute the Notice 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 \$1,650.00 at \$550.00 per month for January 2010, February 2010, and 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 material term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. The Landlord testified that he is also claiming the \$250.00 of unpaid rent for December 2009 which the Tenant asked to have paid by the security deposit without the Landlord's permission. After reviewing the evidence I find the Landlord has proven his claim for damage or loss, as listed above, in the amount of \$1,900.00. (\$1,650.00 + \$250.00).

Filing Fee \$50.00. I find that the Landlord has succeeded with his claim and I hereby award recovery of the filing fee from the Tenant.

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* to be offset against the Tenant's security deposit of \$250.00 plus interest of \$0.00.

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

Unpaid Rent for December 2009	\$250.00
Unpaid Rent for January 2010, February 2010, and March 2010 3 x \$550.00	1,650.00
Filing fee	50.00
Subtotal (Monetary Order in favor of the landlord)	\$1,950.00
Less Security Deposit of \$250.00 plus interest of \$0.00	-250.00
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$1,700.00

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 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 **\$1,700.00**. 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: April 07, 2010.

Dispute Resolution Officer