

DECISION

Dispute Codes OPR OPC MNR FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for unpaid rent, an Order of Possession for cause, for a Monetary Order for unpaid rent and to recover the cost of the filing fee from the Tenant for the cost of 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 March 4, 2010. Mail receipt numbers were provided in the Landlord's verbal testimony. The Tenant is deemed to be served the hearing documents on March 9, 2010, the fifth day after they were mailed, as per section 90(a) of the *Act*.

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 and cause pursuant to section 55 of the *Residential Tenancy Act*?

Is the Landlord entitled to a Monetary Order for unpaid rent pursuant to section 67 of the *Residential Tenancy Act*?

Background and Evidence

At the onset of the hearing the Landlord requested to amend their application for dispute resolution to have the respondent named as the Estate of the Tenant. The Landlord

testified the Tenant passed away in his rental unit on March 23, 2010 and was found by the Resident Manager that day at approximately 8:00 p.m.

The month to month tenancy began on October 1, 2006, and the monthly rent was payable on the first of each month in the amount of \$392.00. The Tenant paid a security deposit of \$300.00 on September 28, 2006.

The Landlord confirmed the Tenant's family removed the Tenant's possessions and returned possession of the rental unit, which required additional cleaning, to the Landlord on approximately April 9, 2010, therefore the Landlord was no longer seeking an Order of Possession.

The Landlord confirmed a 10 Day Notice to End Tenancy for unpaid rent was issued to the Tenant via registered mail on February 13, 2010. Canada Post receipt numbers were provided in the Landlord's testimony. The Landlord wishes to proceed with the monetary claim against the Tenant's estate in the amount of \$2,744.00 for the unpaid rent and late payment fees which is comprised of full rent for the seven months from September 1, 2009 to March 31, 2010 plus late payment fees of \$25.00 per month (7 x \$392.00 plus 7 x \$25.00). The Landlord is also seeking April 2010 rent and late payment fees.

Analysis

All of the testimony and documentary evidence was carefully considered.

The evidence supports the Tenant passed away on March 23, 2010; therefore I approve the Landlord's request to amend the application to name the Respondent as the Estate of the Tenant, in accordance with section 62 of the Act and #23 of the *Residential Tenancy Branch Rules of Procedure*.

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

Claim for unpaid rent - The Landlord claims for unpaid rent of \$2,744.00 for the period of September 1, 2009 to March 31, 2010, pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due. I find that the Tenant 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 I approve the Landlord's claim of \$2,744.00.

The Landlord has also claimed unpaid rent of \$392.00 for the full month of April 1, 2010. The evidence supports possession of the rental unit was returned to the Landlord on approximately April 10, 2010, and that the unit required additional cleaning. Based on the aforementioned I approve the Landlord's claim in the amount of \$196.00, one half of the April 2010 rent payable.

Late payment fees – The evidence supports the tenancy agreement provides for the Landlord to collect late payment charges of \$25.00, in accordance with section 7 of the Residential Tenancy Regulation. As the Tenant has been late in paying rent for the period of September 1, 2009, to April 15, 2010, the Landlord is entitled to claim late payment fees in the amount of \$200.00 (8 x \$25.00)

Filing Fee \$50.00- The Landlord has succeeded with their application therefore I award recovery of the filing fee to the Landlord.

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's estate as follows:

Unpaid Rent for seven months of September 1, 2009 to March 31, 2010 (7 x \$392.00)	\$2,744.00
Unpaid Rent April 1 – 15, 2010 (1/2 of \$392.00)	196.00
Late payment fees for 8 months September 1, 2009 to April 15, 2010 (8 x \$25.00)	200.00
Filing fee	<u>50.00</u>
Subtotal (Monetary Order in favor of the Landlord)	\$3,190.00
Less Security Deposit of \$300.00 plus interest of \$9.48 from September 28, 2006 to April 19, 2010	-309.48
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$2,880.52

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 **\$2,880.52**. 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: April 19, 2010.

Dispute Resolution Officer