

DECISION

Dispute Codes

OPR MNR MNSD 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, to keep the security deposit, 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*, served personally by the Resident Manager to the Tenant on April 14, 2010 at the rental building.

The Landlord, Property Manager and Resident Manager appeared on behalf of the Landlord, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form. No one appeared on behalf of the Tenant despite him being served notice of today's hearing in accordance with the *Act*.

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 for unpaid rent and to keep the security deposit pursuant to sections 38 and 67 of the *Residential Tenancy Act*?

Background and Evidence

The month to month tenancy agreement began on March 1, 2006 for rental of a market value rental unit. Rent is payable on the first of each month in the amount of \$415.00 and a security deposit of \$185.00 was paid by the Tenant on February 8, 2006.

The Landlord submitted documentary evidence which included, among other documents, a copy of the tenancy agreement; a copy of a 10 Day Notice to End Tenancy for unpaid rent dated March 23, 2010; a copy of the notice of rent increase dated November 17, 2009, for the rent to be raised from \$405.00 to \$415.00 effective March 1, 2010; copies of notices issued to the Tenant; and copies of receipts for rent payments received by the Tenant on March 1, 2010 and April 1, 2010 which list "use & occupation only".

The Landlord referred to the evidence in support of his testimony that the Tenant has failed to provide the required documents to continue with a rent subsidy and as a result the Tenant's rent is \$415.00 per month effective March 1, 2010. The Landlord argued they have attempted to work with the Tenant to submit the required documents but that the Tenant continues to be reluctant causing "ongoing issues". The Landlord stated that when the Tenant failed to pay the full rent for March 2010 the 10 Day Notice to End Tenancy was issued and receipts for use and occupation only were issued.

The Resident Manager testified that she was present when her co-worker posted the 10 Day Notice for unpaid rent to the Tenant's door on March 23, 2010, at 11:00 a.m.

The Property Manager and Landlord confirmed that they are seeking an Order of Possession effective April 30, 2010 and a monetary order for \$80.00 to cover the \$40.00 outstanding rent for March 2010 and April 2010.

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 full rent 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*. Based on the aforementioned I approve the Landlord's request for an Order of Possession effective April 30, 2010.

Claim for unpaid rent - The Landlord claims for unpaid rent of \$40.00 for March 2010 and \$40.00 for April 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. Based on the aforementioned I approve the Landlord's monetary claim.

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

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 \$185.00 plus interest of \$6.45 from February 8, 2006 to April 23, 2010.

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

Unpaid Rent (March 2010 \$40.00 + April 2010 \$40.00)	\$80.00
Filing fee	50.00
Subtotal (Monetary Order in favor of the Landlord)	\$130.00
Less Security Deposit of \$185.00 plus interest of \$6.45	-191.45
TOTAL OFF-SET AMOUNT DUE TO THE TENANT	\$61.45

The Landlord is hereby ordered to administer the Tenant's security deposit balance of \$61.45, in accordance with section 38 of the Act.

Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **April 30, 2010 at 1:00 p.m. after service on the Tenant**. This order must be served on the Respondent and may be filed in the Supreme Court and enforced 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 23, 2010.

Dispute Resolution Officer