

DECISION

Dispute Codes OPR MNR FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for unpaid rent and a Monetary Order for unpaid rent 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 March 10, 2010. Mail receipt numbers were provided in the Landlord's documentary evidence. The Tenant is deemed to be served the hearing documents on March 15, 2010, the fifth day after they were mailed as per section 90(a) of the *Act*.

The Landlord appeared, 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 for unpaid rent under section 67 of the *Residential Tenancy Act*?

Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of the following: a) the residential tenancy agreement, b) a 10 Day Notice to end tenancy dated February 2, 2010, and c) a copy of the tenant payment ledger.

The Landlord testified the month to month tenancy agreement began on November 1, 2008 for the monthly rent of \$950.00 which was reduced to \$850.00 as of November 1, 2009 to accommodate for the decreased market. Rent was payable on the first of each month and the Tenant paid a security deposit of \$475.00 on November 1, 2008.

The Landlord referred to the tenant ledger in support of her testimony that the Tenant began to run a balance of unpaid rent from October 2009 and by February 1, 2010 the

accumulated unpaid rent was \$915.00. A 10 Day Notice to End Tenancy was served to the Tenant when the Landlord posted the notice to the Tenant's door on February 2, 2010 at 3:50 p.m. in the presence of a witness for \$915.00 in unpaid rent.

The Landlord stated that the neighbour informed her the Tenants had vacated the rental unit on approximately March 23, 2010, after which the Landlord attended the unit and regained possession. The Landlord advised that she was withdrawing her request for an Order of Possession and is seeking a monetary order for \$1,765.00 which is comprised of the \$915.00 accumulated rent plus the \$850.00 rent for March 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 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 The Landlord has withdrawn her request for an Order of Possession.

Claim for unpaid rent. The Landlord claims for unpaid rent of \$1,765.00 up 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 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. After reviewing the evidence I find the Landlord has proven his claim for damage or loss, as listed above, in the amount of \$1,765.00.

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.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit of \$475.00 plus interest of \$1.19.

Accumulated Unpaid Rent between October 1, 2009 and March 31, 2010	\$1,765.00
Filing fee	50.00
Subtotal (Monetary Order in favor of the landlord)	\$1,815.00
Less Security Deposit of \$475.00 plus interest of \$1.19	-476.19
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$1,338.81

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 **\$1,338.81**. 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 23, 2010.

Dispute Resolution Officer