

DECISION

Dispute Codes OPR MNR FF

Introduction

This was a reconvened hearing which dealt with an Application for Dispute Resolution by the Landlord seeking an Order for Possession for unpaid rent, a Monetary Order for unpaid rent, and recovery of the filing fee. The landlord originally applied through the direct request process which, upon review on April 13, 2010, was scheduled for a conference call hearing in accordance with section 74 of the *Residential Tenancy Act*.

Service of the notice of reconvened hearing documents, by the Landlord to the Tenants, was done in accordance with section 89 of the *Act*, served personally by the Landlord to the Tenants at the rental unit on April 19, 2010, the same date the Landlord received the notices in the mail.

The Landlord appeared, was provided the opportunity to present his evidence orally, in writing, and in documentary form.

Issues(s) to be Decided

Is the Landlord entitled to an Order of Possession under section 55 of the *Residential Tenancy Act*?

Is the Landlord entitled to a Monetary Order under section 67 of the *Residential Tenancy Act*?

Background and Evidence

The Landlord testified that the male Tenant, as named in his application for dispute resolution, negotiated the rental terms and requested that the Landlord issue the written tenancy agreement in the female Tenant's name. The Landlord argued that the male

Tenant paid the security deposit and the first month rent directly to the Landlord and requested that the Landlord deal with the male Tenant regarding the tenancy issues. The Landlord confirmed that the male Tenant resided at the rental unit with the female Tenant and their son.

The month to month Tenancy agreement began on March 1, 2010. Rent is payable on the first of each month in the amount of \$1,100.00 and the male Tenant paid a security deposit of \$550.00 on February 1, 2010.

The Landlord advised that when April 2010 rent was not paid he served the male Tenant, in person, with the 10 Day Notice to End Tenancy for Unpaid Rent, on April 2, 2010, in the presence of a witness.

The Landlord confirmed the Tenants are still occupying the rental unit and have threatened him that they will not move until he hires a bailiff to remove them. The Landlord is seeking rent for April 2010 and May 2010 and an immediate order of possession.

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.

A “**tenancy agreement**” means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit. The evidence supports that the male Tenant negotiated the rental unit, he paid the security deposit and March rent, and he has occupied the rental unit from the onset of the tenancy agreement. Therefore I find the male Tenant has established a verbal tenancy relationship with the Landlord and became a co-tenant with the female Tenant. Therefore the male and female Tenants are jointly and severally liable for any debts or damages relating to this tenancy.

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 Tenants failed to pay the rent or apply to dispute the Notice within 5 days after receiving this Notice, and that the Tenants are 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 \$2,200.00 which consists of \$1,100.00 for each month of April 2010 and May 2010, 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. After reviewing the evidence I find the Landlord has proven his claim for damage or loss, as listed above, in the amount of \$2,200.00

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 Tenants.

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 Tenants' security deposit of \$550.00 plus interest of \$0.00 as follows:

Unpaid Rent for April 2010	\$1,100.00
Unpaid Rent for May 2010	1,100.00
Filing fee	50.00
Subtotal (Monetary Order in favor of the Landlord)	\$2,250.00
Less Security Deposit of \$550.00 plus interest of \$0.00	-550.00
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 **immediately after service on the Tenants**. This order must be served on the Respondent Tenants 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 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: May 19, 2010.

Dispute Resolution Officer