

DECISION

Dispute Codes OPR MNSD MNR FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord seeking an Order of Possession for unpaid rent, a Monetary Order for unpaid rent, to keep the security deposit in partial satisfaction of their claim, and to recover the cost of the filing fee from the Tenant.

Service of the hearing documents was done in accordance with section 89 of the *Act*, sent via registered mail to the Tenant on April 10, 2010. The Canada Post tracking number was provided in the Landlord's evidence. The Tenant is deemed to be served the hearing documents on April 15, 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 her evidence orally, in writing, and in documentary form.

Issue(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 sections 38 and 67 of the *Residential Tenancy Act*?

Background and Evidence

The tenancy was a month to month term commencing on June 1, 2007. The Tenant paid a security deposit in the amount of \$360.00 on May 16, 2007, and rent in the amount of \$767.00 was due on the first of each month.

The Landlord testified that when the Tenant's March 2010 rent payment was returned NSF a 10 Day Notice to End Tenancy was issued on March 16, 2010, and posted to the Tenant's door the same day, by the Landlord.

The Landlord advised that she noticed a note on the Tenant's door at the beginning of May 2010 which stated the Tenant would be returning to finish moving her possessions. The Landlord argued that she posted a 24 hour notice of entry on the Tenant's door on May 6, 2010 and when she returned on May 10, 2010 she entered the unit and found it vacant. The Landlord stated that the Tenant had failed to clean the rental unit, the carpet was soiled and so dirty that they had to replace it, and there were numerous holes in the walls which had to be repaired before they could re-rent the unit. The Landlord confirmed that they completed the clean up and repairs as soon as possible and on May 20, 2010, they entered into a new tenancy agreement for the unit to be occupied as of June 15, 2010.

The Landlord testified that they were withdrawing their request for an Order of Possession, as they have regained possession of the unit, and is proceeding with their request for a Monetary Order for three months rent of March 2010, April 2010, and May 2010, plus to recover the cost of the filing fee. The Landlord confirmed that the Tenant did not provide them with a forwarding address.

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 – The Landlord withdrew her request for an Order of Possession.

Claim for unpaid rent - The Landlord claims for unpaid rent of \$2,301.00 which consists of three month's rent of \$767.00 each for March, 2010, 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 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; therefore I approve the Landlord's claim of \$2,301.00.

Filing Fee \$50.00- I find that the Landlord has succeeded with her 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 \$360.00 plus interest of \$12.05.

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

Unpaid Rent for March 2010, April 2010, and May 2010 3 x \$767.00	\$2,301.00
Filing fee	50.00
Subtotal (Monetary Order in favor of the landlord)	\$2,351.00
Less Security Deposit of \$360.00 plus interest of \$12.05 from May 16, 2007 to May 25, 2010	-372.05
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$1,978.95

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 **\$1,978.95**. 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: May 25, 2010.

Dispute Resolution Officer