

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for orders as follows:

1. An Order of Possession for unpaid rent pursuant to section 55.
2. A monetary order for unpaid rent pursuant to section 67.
3. An order to be allowed to keep all or part of the security deposit pursuant to section 38.
4. To recover the filing fee from the landlord for the cost of this application pursuant to section 72.

Both the landlord and the tenants appeared at the hearing and were given full opportunity to be heard, to present evidence and to make submissions. The landlord served the 10 Day Notice to End Tenancy for Unpaid Rent (the notice) by posting a notice on the tenants' door on May 2, 2010. The landlord gave sworn testimony that he sent the tenants the Application for Dispute Resolution hearing package (the hearing package) by registered mail on May 17, 2010. The landlord provided a Canada Post tracking number to confirm the service of the hearing package by registered mail. I accept that the tenants were duly served with the notice and the hearing package.

At the outset of the hearing, the male tenant asked for an adjournment as he maintained that he had not had a proper opportunity to respond to the evidence that he expected the landlord to submit. In her application for dispute resolution, the landlord referred to concerns raised by another tenant about the disturbance caused by the tenants' use of the rental premises. As the landlord's application to end this tenancy was based on unpaid rent for May 2010, the landlord said that she would not be presenting any witnesses or evidence regarding concerns about the disturbance caused by the tenants.

Under these circumstances, I ruled that the tenant did not need additional time to prepare to respond to evidence from a witness who would not be testifying at this hearing.

Issue(s) to be Decided

Whether the landlord is entitled to an Order of Possession for unpaid rent. Whether the landlord is entitled to a monetary order for unpaid rent, retention of the security deposit and recovery of the filing fee for this application.

Background and Evidence

The landlord gave evidence that she entered into a fixed term tenancy agreement with the tenants on February 1, 2010. Rent on this six month lease was established at \$750.00 per month, payable on the first of each month. On January 26, 2010, the tenants paid a security deposit of \$375.00. The landlord testified that she continued to hold this security deposit.

The landlord testified that she served the tenants with the notice on May 2, 2010, for non-payment of \$775.00 that was then owing. The landlord said that \$750.00 of this amount was the monthly rent; the remaining \$25.00 was a late fee assessed in accordance with section 3(b) of their Residential Tenancy Agreement. She submitted a copy of this Agreement into evidence.

The landlord and the tenants agree that the tenants did not pay any of the amount owing for May 2010 until May 8, 2010. On that date, the landlord and tenants agree that the tenants paid \$765.00 to be applied to the amount then owing. The landlord entered the receipt issued that date for that amount into evidence. The tenants testified that the female tenant paid the additional \$10.00 late fee to the landlord that evening. She had no receipt for that \$10.00 payment. The landlord testified that no such \$10.00 payment was made that day. The landlord testified that the tenants did not pay all of the \$775.00 cited in the notice within the time frame specified under the *Act*. As such,

the landlord asked for an Order of Possession as she maintained that this tenancy agreement ended when the tenants did not pay all of the amount owing on their rent within five days of notice having been deemed served.

The landlord and tenants agree that the tenants have not paid any portion of their June 2010 rent. The male tenant explained that he did not pay the June rent because he was concerned that if he did, the landlord may still attempt to evict them on the basis of the landlord's application for dispute resolution.

The landlord testified that the tenants had caused damage to the rental premises, and that other tenants had complained about them, prompting one tenant to move out of the building. At the hearing, the landlord requested an Order of Possession, a monetary order for \$10.00 for unpaid rent and late fees for May 2010. She also noted that she has not yet received any rental payment from the tenants for June 2010. She asked to keep the security deposit to offset the damage to the premises caused by the tenants

During the hearing, the above issues were discussed at length. The parties engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Analysis

Pursuant to Section 63 of the *Residential Tenancy Act*, the dispute resolution officer may assist the parties settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order.

During this hearing, the parties reached an agreement to settle their dispute. Specifically, it was agreed that I would issue an Order of Possession to the landlord for non-payment of all of the \$775.00 cited as owing in the landlord's May 2, 2010 notice. The landlord gave sworn evidence that she would only act on this Order of Possession if the tenants failed to implement their following two commitments before June 5, 2010:

1. The tenants agreed to pay the landlord the \$10.00 owing from May 2010 and \$775.00 for June 2010.
2. The tenants agreed to provide written notice to the landlord that they intend to vacate the rental premises by June 30, 2010 at 1 o'clock in the afternoon.

For her part, the landlord committed to the following:

3. The landlord agreed to forego any claim for lack of notice regarding the tenant's written notice to vacate the rental premises by June 30, 2010 at 1 o'clock in the afternoon.
4. The landlord agreed to withdraw her present application for a monetary order.

These particulars comprise the full and final settlement of all aspects of this dispute for both parties.

Request to Retain a Portion of the Tenants' Security Deposit

I dismiss the landlord's application to be allowed to retain a portion of the tenants' security deposit with leave to reapply following the tenants' departure from the rental premises.

Filing Fee

Since I am not satisfied that the landlord exhausted opportunities to resolve this matter before applying for dispute resolution, I deny the landlord's application for recovery of her filing fee for this application.

Conclusion

I issue the landlord an Order of Possession which she can enforce within SEVEN DAYS if the tenants do not implement provisions # 1 and # 2 as outlined above. I dismiss the landlord's claim for a monetary order for the reasons outlined in this decision.

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*.