

## **DECISION**

Dispute Codes      MNR FF

### Introduction

This was a reconvened hearing which dealt with an Application for Dispute Resolution by the Landlord seeking a Monetary Order for unpaid rent, and recovery of the balance of the filing fee. The Landlord originally applied through the direct request process which, upon review, was issued an Order of Possession and awarded \$50.00 of the \$100.00 filing fee, and her request for a monetary order for unpaid rent was scheduled for a conference call hearing in accordance with section 74 of the *Residential Tenancy Act*.

The Landlord appeared, gave affirmed testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form.

No one appeared on behalf of the Tenant.

### Issues(s) to be Decided

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

### Background and Evidence

The Landlord testified the tenancy agreement began on June 1, 2009 and ended on approximately April 30, 2010 after serving the Tenant, in person, with the Order of Possession on April 25, 2010.

The Landlord advised the Tenant paid a security deposit of \$800.00 on June 1, 2009 and rent was payable on the first of each month in the amount of \$1,600.00.

The following is a list of payments made towards rent as confirmed by the Landlord's testimony:

DATE	PAYMENT	SHORT PAID	TOTAL DUE
June 2009	\$800.00	\$800.00	\$800.00
July 2009	500.00	1,100.00	1,900.00
August 2009	800.00	800.00	2,700.00
September 2009	300.00	1,300.00	4,000.00
October 2009	470.00	1,130.00	5,130.00
November 2009	1,400.00	200.00	5330.00
December 2009	600.00	1,200.00	6,530.00
January 2010	2,100.00	(500.00)	6,030.00
February 2010	350.00	1,250.00	7,280.00
March 2010	400.00	1,200.00	8,480.00
April 2010	0.00	1,600.00	10,080.00

The Landlord argued that the Tenant, his mother and even his grandmother informed the Landlord on several occasions that the Tenant was awaiting an inheritance from his grandfather's estate and that when the family cottage sold the Tenant would pay the Landlord the full amount owing for the rent. The Landlord stated that she felt the Tenant and his family were sincere so she was giving them the benefit of the doubt.

The Landlord stated that she could not hold on forever and began the process to evict the Tenant in September 2009 at which point she issued a 10 Day Notice and later found out she used an outdated form. She issued a second 10 Day Notice in March 2010 only to find out it was an incorrect form as well. A third 10 Day Notice was issued to the Tenant on March 26, 2010 for which the Landlord was granted an Order of Possession.

### Analysis

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.

The Landlord claims for unpaid rent of \$10,080.00 for the period of June 2009 to April 2010, as per the chart listed above; 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. In this case I find the Landlord acted in good faith and had a reasonable expectation that the rent arrears would be forthcoming once the Tenant received his inheritance and the Landlord acted accordingly to end the tenancy when there was no longer an expectation of receiving the payment. Based on the aforementioned I hereby approve the Landlord's request for a monetary order.

**Filing Fee** I find that the Landlord has succeeded with her application therefore I award recovery of the \$50.00 balance of the \$100.00 filing fee.

**Monetary Order** – I find that the Landlord is entitled to a monetary claim, that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest, and that the Landlord is entitled to recover the balance of the filing fee from the Tenant as follows:

Unpaid Rent between June 2009 and April 2010	\$10,080.00
Filing fee	50.00
Subtotal (Monetary Order in favor of the landlord)	<b>\$10,130.00</b>
Less Security Deposit of \$800.00 plus interest of \$0.00	-800.00
<b>TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD</b>	<b>\$9,330.00</b>

### 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 **\$9,330.00**. 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: June 09, 2010.

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Dispute Resolution Officer