

DECISION

Dispute Codes OPR MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord seeking an Order of Possession for unpaid rent and a Monetary Order for unpaid rent, money owed for damage or loss under the Act, to keep the security deposit in partial satisfaction of the claim, and to recover the cost of the filing fee from the Tenants for this application.

Service of the hearing documents was done in accordance with section 89 of the *Act*, served personally by the Landlord to the Tenants at the rental unit on April 22, 2010.

The Landlord appeared, gave affirmed testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form. No one attended the hearing on behalf of the Tenants, despite being served notice of the hearing in accordance with the Residential Tenancy Act (Act).

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, 67, and 72 of the *Residential Tenancy Act*?

Background and Evidence

The fixed term tenancy commenced on March 1, 2009 and switched to a month to month tenancy after February 28, 2010. The Tenants paid a security deposit in the amount of \$425.00 on February 14, 2009 plus a pet deposit of \$200.00 on February 28, 2009. Rent was payable on the first of each month in the amount of \$850.00.

The Landlord testified that when the Tenants failed to pay the April 2010 rent a 10 Day Notice to End Tenancy listing a move out date of April 13, 2010, was issued by the Landlord and posted on the Tenants' door on April 2, 2010.

The Landlord argued that since the 10 Day Notice to End Tenancy was issued the Tenants paid the April 2010 rent on April 16, 2010. On April 30, 2010, the Tenants provided the Landlord with one month's written notice to cancel the tenancy effective May 31, 2010. The Landlord confirmed the Tenants failed to pay the May 2010 rent, continued to occupy the rental unit until they vacated on May 31, 2010. The Landlord testified that he was withdrawing his request for an Order of Possession now that he had regained possession.

The Landlord advised that the current rent arrears total \$880.00 and is comprised of \$850.00 for May 2010 rent, plus \$10.00 for May 2010 parking fee, plus the \$20.00 May 2010 late fee as provided for in section 3(a) of the tenancy agreement.

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 Tenants.

Claim for unpaid rent. The Landlord claims for unpaid rent of \$850.00 plus \$10.00 parking fee for 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. Based on the aforementioned I find the Landlord has proven the test for damage or loss under the *Act* and I hereby approve his claim of \$860.00 of unpaid rent plus parking.

Late Payment Fees. The Landlord is seeking \$20.00 for late payment fees for May 2010, as provided for in # 3(a) of the tenancy agreement, which is in compliance with section 7 of the Residential Tenancy Regulation. Based on the aforementioned I find that the Landlord has proven his claim and I hereby approve his request of \$20.00 in late payment fees.

Filing Fee \$50.00. The Landlord has been successful with his application and I find that he is entitled to recover the \$50.00 filing fee from the Tenants.

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 Tenants' security deposit of \$425.00 plus \$200.00 pet deposit, plus interest of \$0.00 for a total of \$625.00.

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

Unpaid Rent for May 2010	\$850.00
Unpaid Parking for May 2010	10.00
Late Payment fee for December 2009	20.00
Recovery of the filing fee	<u>50.00</u>
Subtotal (Monetary Order in favor of the Landlord)	\$930.00
Less Security Deposit of \$497.50 plus interest of \$0.00	-625.00
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$305.00

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 **\$305.00**. The order must be served on the 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: June 09, 2010.

Dispute Resolution Officer