

DECISION

Dispute Codes OPR MNR MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for unpaid rent, a Monetary Order for unpaid rent, to keep all or part of the security deposit, and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents, by the Landlord to the Tenant, was served via registered mail on May 5, 2010. Canada Post tracking numbers were provided in the Landlord's testimony. The Tenant is deemed to have received the hearing package on May 10, 2010, five days after they were mailed in accordance with section 90 of the Act.

The Landlord appeared, gave affirmed testimony, was provided the opportunity to present their evidence orally, in writing, and in documentary form. No one attended on behalf of the Tenant despite the Tenant being served notice of today's hearing in accordance with the Act.

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 sections 38, 67, and 72 of the *Residential Tenancy Act*?

Background and Evidence

The Landlord confirmed the tenancy was effective May 1, 2000 and is based on a month to month tenancy agreement with subsidized rent. The current portion of rent payable by the Tenant is \$502.00 which is due on the first of each month. The Tenant paid a security deposit of \$260.00 on May 23, 2000, which was based on one half of the market rent at the time the tenancy agreement was entered into.

The Landlord advised that when the Tenant failed to pay the April 2010 rent a 10 Day Notice to End Tenancy was issued and posted to the Tenant's door on April 7, 2010, listing an effective date of April 17, 2010 for \$502.00 of unpaid rent which was due on April 1, 2010. The Landlord stated that a copy of the 10 Day Notice was also mailed to the Tenant via regular mail on April 17, 2010, to ensure the Tenant received the Notice.

The Landlord testified that she has worked with the Tenant, the Tenant's Assistance Worker, and the member of the Housing Integrated Task Team, and confirmed receipt of payments for "use and occupancy only" of \$502.00 for April 2010 rent received on May 13, 2010, and \$502.00 for May 2010 rent received on May 28, 2010. The Landlord referred to her evidence which included copies of receipts that confirm the funds were received for use and occupancy only. The Landlord stated she is confident that the Tenant and her team of assistance workers are all aware this tenancy would be ending and that she has recently received messages from the Tenant confirming the Tenant has found another rental accommodation.

The Landlord requested to amend her application to withdraw her request to recover the cost of the filing fee. The Landlord confirmed that she is seeking a Monetary Order of \$502.00 for June 1, 2010 rent, less the security deposit and an Order of Possession effective June 30, 2010.

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.

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 Tenant failed to pay the rent or apply to dispute the Notice within 5 days after receiving this Notice, and that the Tenant is 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*. The evidence supports the tenancy was not reinstated when payments were received for April 2010 and May 2010 rent for use and occupancy only and that June 2010 remains unpaid. Therefore I approve the Landlord's request for an Order of Possession effective June 30, 2010.

Claim for unpaid rent. The Landlord claims for unpaid rent of \$502.00 for the month of June 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. After reviewing the evidence I find the Landlord has met the burden of proof and I approve her request in the amount of \$502.00.

Filing Fee \$50.00 The Landlord withdrew her request to recover the cost of the filing fee.

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 Tenant's security deposit as follows:

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|---|-----------------|
| Unpaid Rent for June 2010 | <u>\$502.00</u> |
| Subtotal (Monetary Order in favor of the Landlord) | \$502.00 |
| Less Security Deposit of \$260.00 plus interest of \$20.69 from May 23, 2000 to June 18, 2010 | -280.69 |
| TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD | \$221.31 |

Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **June 30, 2010 at 1:00 p.m. after service on the Tenant**. This order must be served on the Respondent Tenant 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 **\$221.31**. 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 18, 2010.

Dispute Resolution Officer