

DECISION

Dispute Codes OPR MNR MNSD FF
 CNR CNC RR

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed 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.

The Tenant filed seeking an Order to cancel the notice to end tenancy for unpaid rent, to cancel a notice for cause, and to obtain an Order to allow the Tenant reduced rent for repairs or services agreed upon but not provided.

Service of the hearing documents by the Landlord to the Tenant was done in accordance with section 89 of the *Act*, served personally to the Tenant in the presence of a witness on May 25, 2010 at the rental unit.

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

The Tenant did not appear despite being served with notice of the Landlord's application in accordance with the *Act* and despite having their own application for dispute resolution scheduled for the same hearing date and time.

Issue(s) to be Decided

Is the Landlord entitled to Orders under sections 38, 55, 67, and 72 of the *Residential Tenancy Act*?

Is the Tenant entitled to an Order under sections 46, 47, and 65 of the *Residential Tenancy Act*?

Background and Evidence

The Landlord's Agent testified the month to month tenancy was effective October 1, 2009. Rent was payable on the first of each month in the amount of \$600.00 and the Tenant paid a security deposit of \$300.00 on October 1, 2009.

The Agent argued that when the Tenant failed to pay the May 2010 rent a 10 Day Notice to End Tenancy was served to the Tenant on May 4, 2010, at 5:30 p.m. in the presence of a witness.

The Landlord's Witness testified that he was a witness to the Tenant being served with the 10 Day Notice to End Tenancy and with the hearing package. The Witness argued that he also attended the rental unit to speak with the Tenant in hopes of resolving the matter peacefully and that he told the Tenant to pay rent or leave.

The Agent testified that the Landlord has regained possession of the rental unit when the Tenant vacated on June 19, 2010, so they are withdrawing the request for an Order of Possession.

The Agent confirmed they are seeking the unpaid rent for May 2010 and June 2010 for a total amount of \$1,200.00, retention of the security deposit and recovery of the \$50.00 filing fee.

Analysis

All of the testimony and documentary evidence was carefully considered.

Landlord's Application

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

The Landlord claims for unpaid rent of \$1,200.00 for May 1, 2010 and June 1, 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 find that the Landlord has proven the test for loss as listed above and I hereby approve their claim for unpaid rent of \$1,200.00.

The Landlord has succeeded with their application and therefore I award recovery of the filing fee from the Tenant.

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, and that the Landlord is entitled to recover the filing fee from the Tenant as follows:

Unpaid Rent for May 2010 and June 2010 (2 x \$600.00)	\$1,200.00
Filing fee	<u>50.00</u>
Subtotal (Monetary Order in favor of the Landlord)	\$1,250.00
Less Security Deposit of \$300.00 plus interest of \$0.00	-300.00
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$950.00.

Tenant's Application

Section 61 of the *Residential Tenancy Act* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the Director must determine if the hearing is to be oral or in writing. In this case, the hearing was scheduled for an oral teleconference hearing.

In the absence of the Applicant Tenant, the telephone line remained open while the phone system was monitored for ten minutes and no one on behalf of the Applicant Tenant called into the hearing during this time. Based on the aforementioned I find that the Tenant has failed to present the merits of his application and the application is dismissed, without leave to reapply.

Conclusion

Landlords' Application

A copy of the Landlords' decision will be accompanied by a Monetary Order for **\$950.00**. The order must be served on the Tenant and is enforceable through the Provincial Court as an order of that Court.

Tenants' Application

The Tenant's application is HEREBY DISMISSED, without leave to reapply.

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 25, 2010.

Dispute Resolution Officer