

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 and a Monetary Order for unpaid rent and late fees. The landlord also seeks an Order to keep all or part of the security deposit and to recover the cost of the filing fee.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on May 31, 2010. Mail receipt numbers were provided in the landlord's documentary evidence. Canada Post tracking information shows the tenant signed for the hearing documents on June 02, 2010.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Is the landlord entitled to an Order of Possession due to unpaid rent?
- Is the landlord entitled to a monetary Order to recover rent owed and late fees?
- Is the landlord entitled to keep the security deposit?

Background and Evidence

This month to month tenancy started on April 01, 2009. Market rent for this unit is \$959.00 per month and the tenant receives a rent subsidy which brings her monthly rent down to \$403.00 per month. Rent is due on the first of each month. The tenant paid a security deposit of \$480.00 on March 11, 2009.

The landlords' agent testifies that the tenant did not pay her rent for May, 2010 of \$403.00. A late fee of \$25.00 was applied for May and a late fee was also applied for late rent in January, 2010. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on May 04, 2010.

This was posted in the tenants' mail box and was deemed to have been served three days after posting. The tenant had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on May 14, 2010. The tenant did not pay the outstanding rent or dispute the Notice within five days. Since that time the tenant did not paid rent for June, 2010 to the amount of \$403.00 on the day it was due. On June 25, 2010 the tenant paid \$806.00 for May and June's rent and this was accepted for use and occupancy only. The tenant did not pay rent for July on the day it was due but paid \$403.00 on July 05, 2010 which was also accepted for use and occupancy only. At this point in time the tenant does not owe any outstanding rent but the landlord seeks to recover \$50.00 in late fees for January and May, 2010.

The landlord has provided a copy of the tenancy agreement which stipulates under section 21 that the landlord will charge the tenant \$25.00 for each month rent is late.

The landlord has applied to retain part of the tenants' security deposit towards money owed. The landlord has also applied for an Order of Possession to take effect as soon as possible.

Analysis

Section 26 of the Act states a tenant must pay rent on the day it is due. The tenant failed to pay rent on time for May, 2010 and the landlord served the tenant with a 10 day Notice to End Tenancy. This Notice stated that the tenant had five days to pay the outstanding rent, apply to dispute the Notice or the tenancy would end. The tenant did not pay the outstanding rent within the five days or dispute the Notice but did pay the outstanding rent for May and June on June 25, 2010. This money was accepted by the landlord for use and occupancy only, which means the landlord, was not reinstating the tenancy and the tenancy would still end on the effective date of the Notice.

As the Notice was posted in the tenants mail box it was not deemed to have been served until May 07, 2010 therefore the effective date of the Notice has been amended to May 17, 2010 pursuant to section 53 of the *Act*.

Based on the foregoing, I find that the tenant is conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice and grant the landlord an order of possession pursuant to section 55 of the *Act*.

As the tenant has now paid the rent arrears the landlord has amended her monetary claim to recover the late fees for January and May, 2010 only, to the sum of **\$50.00**. I find the landlord is entitled to recover this amount pursuant to section 67 of the *Act*.

As the landlord has been successful in this matter, she is also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to section 72(1) of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlord's amended monetary claim. I **order** the landlord pursuant to s. 38(4)(b) of the *Act* to keep part of the tenant's security deposit of **\$100.00** leaving a balance **\$380.00** which must be returned to the tenant at the end of the tenancy or otherwise dealt with in compliance with section 38 of the *Act*.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days** after service on the tenant. This order must be served on the Respondent and may be filed in the Supreme Court and enforced 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: July 16, 2010.

Dispute Resolution Officer