

DECISION

Dispute Codes OPL MNR FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for Landlord's use and a Monetary Order for unpaid rent and to recover the cost of the filing fee from the Tenants for this application.

Service of the original hearing documents, by the Landlord to each Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on June 3, 2010. Mail receipt numbers were provided in the Landlord's evidence. The Landlord personally served the Male Tenant with a copy of the amended application on July 14, 2010.

The Landlord, the Landlord's Witness and the male Tenant appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

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 section 67 of the *Residential Tenancy Act*?

Background and Evidence

The tenancy began as a fixed term effective March 1, 2001 and switched to a month to month tenancy after March 1, 2002. Rent is payable on the first of each month in the amount of \$1,850.00. There were no deposits paid by the Tenants.

The Landlord and Tenant confirmed that the Landlord filed an action in Provincial Small Claims Court on May 7, 2010, pertaining to a promissory note the parties signed for unpaid rent for a period of 2003, 2004, and 2005. The Landlord argued that the Tenants have also failed to pay June and July 2010 rent.

A 2 Month Notice to End Tenancy for Landlord's use was issued and was posted to the Tenants' door on May 12, 2010, at 2:20 p.m. as confirmed by the Witness' testimony. The Tenant confirmed receipt of the 2 Month Notice and acknowledged that the Notice was signed on May 12, 2010 and the reasons selected were for the Landlord's close family member would be occupying the rental unit.

The Landlord testified that her daughter and son-in law will be occupying the rental unit. She argued that they have been living with her since approximately March 2010, when they sold their house. Although the Landlord's company owns another rental unit, her family requires this rental unit as they are both musicians and need to be in a house and not an apartment because of the noise they create.

The Tenant confirmed that on June 28, 2010, they provided the Landlord with written notice to end their tenancy effective August 1, 2010. He also confirmed that he put a stop payment on his June 2010 rent payment and he has not paid the July 2010 rent. The Tenant argued that he has not paid the last two months of rent because they will incur moving expenses and will have to pay a security deposit elsewhere.

Analysis

All of the testimony and documentary evidence was carefully considered.

The parties confirmed that the matter pertaining to the promissory note and monies owed for 2003, 2004, and 2005, has been filed with Provincial Court as of May 7, 2010. For the aforementioned reason I declined to hear this matter in accordance with section 58 of the Act.

The evidence supports that the Tenants have been served a 2 Month Notice to End Tenancy for Landlord's use on May 12, 2010, and on June 28, 2010 the Tenants have issued a one month written notice to the Landlord to end the tenancy. Based on the aforementioned I find this tenancy will end, in accordance with the Act, effective July 31, 2010, and I hereby approve the Landlord's request for an Order of Possession.

The Tenant has admitted to not paying June 2010 rent and July 2010 rent. Section 51 of the Act provides that a tenant who receives a notice to end tenancy for landlord's use of the property is entitled to compensation that is the equivalent to one month's rent payable under the tenancy agreement and that the tenant may withhold payment of the last month's rent as satisfaction of this compensation. Therefore I find the Tenants' rent for July 2010 has been satisfied from the compensation under section 51 of the Act. June 2010 rent however is still outstanding in contravention of section 26 of the Act which states that a tenant must pay rent when it is due in accordance with the tenancy agreement. Based on the aforementioned I hereby approve the Landlord's request for a monetary order in the amount of \$1,850.00.

The Landlord has been partially successful with her application, therefore I award recovery of the \$50.00 filing fee.

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

Unpaid Rent for June 2010	\$1,850.00
Filing fee	<u>50.00</u>
TOTAL AMOUNT DUE TO THE LANDLORD	\$1,900.00

Conclusion

I HEREBY FIND that the landlord is entitled to an Order of Possession effective **July 31, 2010, at 1:00 p.m.** This order must be served on the Respondent Tenants 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 **\$1,900.00**. The order must be served on the Respondent 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: July 20, 2010.

Dispute Resolution Officer