

DECISION

Dispute Codes OPR OPC OPB 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 and/or utilities, for cause, the tenant has breached an agreement with the landlord, and a Monetary Order for unpaid rent and/or utilities, to keep all or part of the security deposit, and to recover the filing fee from the Tenant.

Personal service of the hearing documents was conducted by the Landlord to the Tenant on July 1, 2010 at the rental unit, in accordance with section 89 of the *Residential Tenancy Act*.

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

Issues(s) to be Decided

Is the Landlord entitled to an Order of Possession in accordance with section 55 of the *Residential Tenancy Act*?

Is the Landlord entitled to a Monetary Order in accordance with section 67 of the *Residential Tenancy Act*?

Background and Evidence

The parties entered into a written tenancy agreement on January 12, 2010 for a fixed term tenancy commencing on January 12, 2010 and is set to expire on January 31,

2010. Rent is payable on the first of each month in the amount of \$700.00 and the Tenant paid a security deposit of \$350.00 on January 12, 2010. Rent is received by the Landlord in two separate payments with the first coming directly from Income Assistance in the amount of \$634.67 and the Tenant pays the balance owing of \$65.33 per month.

The Landlord confirmed receipt of the Income Assistance payments for each month including up to August 1, 2010, however the Tenant has failed to pay the balance due for June, July, and August 2010 leaving an outstanding balance of \$195.99 (3 x \$65.33). A 10 Day Notice to End Tenancy for unpaid rent of \$65.33 and \$45.61 of unpaid utilities was issued and served to the Tenant, in person on June 21, 2010.

The cost of electricity is not included in the rent and the Tenant was required to put the electric bill in her name as supported by the past due invoice dated April 27, 2010, which was provided in the Landlord's evidence.

The Landlord argued that she is also dealing with several incidents and complaints from neighbours pertaining to this Tenant which resulted in the Landlord issuing the Tenant a 1 Month Notice to End Tenancy for cause for the reasons that the Tenant is repeatedly late paying rent; the Tenant or person permitted on the property by the Tenant has a) significantly interfered with or unreasonable disturbed another occupant or the Landlord, b) seriously jeopardized the health or safety or lawful right of another occupant or the Landlord, c) put the Landlord's property at risk; and the Tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time.

The 1 Month Notice to End Tenancy for Cause was served personally to the Tenant by the Landlord, in the presence of a witness, on June 21, 2010. The Landlord referred to her documentary evidence in support of her testimony which included among other things six incident reports and a breach letter issued in relation to this Tenant.

The Landlord argued that since issuing the 10 Day Notice for Unpaid rent and the 1 Month Notice to End Tenancy for Cause the Tenant has refused to pay the monthly balance due on the rent, caused damage to the mailbox by prying it open on July 16, 2010, broken two windows in her rental unit on July 31, 2010 and is now conducting what appears to be drugs sales through the broken windows, and as of August 20, 2010 has run an extension cord into the hallway for power as the electricity has been disconnected.

In additional to the Order of Possession, the Landlord is seeking a Monetary Order for \$195.99 in unpaid rent for June, July, and August, 2010 (3 x \$65.33) plus \$133.56 for unpaid utilities.

Analysis

All of the testimony and documentary evidence was carefully considered.

Given the evidence before me, in the absence of any evidence from the Tenant who did not appear despite being properly served with notice of this proceeding, I accept the version of events as discussed by the Landlord and corroborated by her evidence.

Upon review of the Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of the Act and I find that it was served upon the Tenants in a manner that complies with the Act. Upon consideration of all the evidence presented to me, I find the Landlord had valid reasons for issuing the Notice.

The Tenant did not apply to dispute either the 1 Month Notice for Cause or the 10 Day Notice for unpaid rent. Therefore, I find the Tenant is conclusively presumed under sections 47(5) and 46 (5) of the Act to have accepted that the tenancy ended on the effective date of the Notices.

Based on the aforementioned I hereby grant the Landlord an Order of Possession.

The evidence supports that the Tenant has failed to pay the full amount of rent owing for June, July, and August, 2010, in violation of section 26 of the Act which provides that a tenant must pay rent when it is due under the tenancy agreement. As per the aforementioned I approve the Landlord's request for a Monetary Order in the amount of \$195.99.

The Landlord is seeking \$133.56 in unpaid electricity however the Landlord has only provided evidence up to the April 27, 2010 invoice for a past due amount of \$32.30. The tenancy agreement supports that the Tenant is responsible for the cost of the electricity. Therefore, I hereby approve the Landlord's request for \$32.30, the amount supported by the evidence.

The Landlord has been primarily successful with her application, therefore I award the Landlord recovery of the \$50.00 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:

Unpaid Rent for June, July, and August 2010 (3 x \$65.33)	\$195.99
Unpaid Electricity Utility	32.30
Filing fee	50.00
Subtotal (Monetary Order in favor of the Landlord)	\$278.29
Less Security Deposit of \$350.00 plus interest of \$0.00	- 350.00
TOTAL OFF-SET AMOUNT DUE TO THE TENANT	\$71.71

The Landlord is hereby ordered to continue to hold the balance of the security deposit in the amount of \$71.71 in trust, until such time as all matters pertaining to this tenancy have been dealt with in accordance with section 62 of the *Residential Tenancy Act*.

Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession 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: August 25, 2010.

Dispute Resolution Officer