

DECISION

Dispute Codes OPR MNR 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 or utilities, 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 sent via registered mail on July 7, 2010. Canada Post tracking numbers were provided in the Agent's testimony. The Tenant is deemed to have been served the hearing documents on July 12, 2010, five days after they were mailed in accordance with section 90 of the Act.

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

Issues(s) to be Decided

Is the Landlord entitled to an Order of Possession for unpaid rent under section 55 of the *Residential Tenancy Act*?

Is the Landlord entitled to a Monetary Order under sections 67 and 72 of the *Residential Tenancy Act*?

Background and Evidence

The month to month tenancy began April 14, 2010. The monthly rent is payable on the first of each month in the amount of \$1,600.00 and the Tenant paid a security deposit of \$800.00 on April 14, 2010.

The Agent testified that when the Tenant's June 2010 rent payment did not clear the Landlord issued a 10 Day Notice to end Tenancy for unpaid rent on June 26, 2010. The Notice was posted to the Tenant's door on June 26, 2010 at 11:00 a.m. The Landlord

has not been able to reach the Tenant since the beginning of June 2010 and currently there are three months of rent outstanding. (June, July, and August 2010).

The Landlord is seeking a Monetary Order for \$4,800.00 (3 x \$1,600.00) plus an Order of Possession.

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. 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*. Therefore I approve the Landlord's request for an Order of Possession.

Claim for unpaid rent. The Landlord claims for unpaid rent of \$4,800.00 at \$1,600.00 per month for June 2010, July 2010, and August 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 proven his claim in the amount of \$4,800.00. (\$1,600.00 x 3).

Filing Fee \$50.00. I find that the Landlord has succeeded with her claim and I hereby award recovery of the filing fee from the Tenant.

Monetary Order – I find that the Landlord is entitled to a monetary claim and 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 , August 2010 (3 x \$1,600.00)	\$4,800.00
Filing fee	50.00
Subtotal (Monetary Order in favor of the landlord)	\$4,850.00
Less Security Deposit of \$800.00 plus interest of \$0.00	-800.00
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$4,050.00

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 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 **\$4,050.00**. 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: August 27, 2010.

Dispute Resolution Officer