

DECISION

Dispute Codes OPR MNR MNDC 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, for money owed or compensation for damage or loss under the Act, 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 done in accordance with section 89 of the *Act*, sent via registered mail on July 7, 2010. Mail receipt numbers were provided in the Landlord's testimony. The Tenant is deemed to be served the hearing documents on July 12, 2010, the fifth day after they were mailed as per section 90(a) of the *Act*.

The Landlord appeared, gave affirmed testimony, was 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 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 on September 1, 2009. The monthly rent is payable on the first of each month in the amount of \$880.00. A security deposit of \$440.00 was paid on August 17, 2009.

When the Tenant failed to pay the June 2010 rent in full a 10 Day Notice to End Tenancy was issued and posted to the Tenant's door on June 22, 2010 for \$910.00 of accumulated unpaid rent (\$880.00 from June 2010 plus \$30.00 from May 2010). A payment of \$400.00 was made by the Tenant on June 28, 2010 leaving a balance owing of \$510.00. A receipt was issued for use and occupancy only.

The Landlord noticed on August 3, 2010 that the Tenant had vacated the rental unit and left the keys inside the unit. The Landlord has regained possession is withdrawing her request for an Order of Possession.

The Landlord is seeking \$1,476.00 in unpaid rent which is comprised of \$510.00 for June 2010, \$880.00 for July 2010, plus a prorated rate for the three days in August of \$86.00.

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.

The Landlord claims for unpaid rent of \$1,476.00 in unpaid rent which is comprised of \$510.00 for June 2010, \$880.00 for July 2010, plus a prorated rate for the three days in August of \$86.00, 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 her claim for unpaid rent.

I find that the Landlord has succeeded with her claim therefore I award recovery of \$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 as follows:

Unpaid Rent for June, July, 3 days in August, 2010	\$1,476.00
Filing fee	<u>50.00</u>
Subtotal (Monetary Order in favor of the Landlord)	\$1,526.00
Less Security Deposit of \$440.00 plus interest of \$0.00	-440.00
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$1,086.00

Conclusion

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 **\$1,086.00**. 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 30, 2010.

Dispute Resolution Officer