

DECISION

Dispute Codes OPR, OPB, MNR, MNDC,

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for non-payment of rent and for a breach of a material term of the tenancy pursuant to section 55; and
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that she gave the tenant a 30 Day Notice to End Tenancy for Cause on July 1, 2010, and a Five Day Notice to End Tenancy for Unpaid Rent on July 2, 2010. She confirmed the tenant's assertion that these notices were provided on letterhead of the Ministry of Attorney General, forms that were used at one time to end tenancies. She said that the Five Day Notice given to the tenants allowed the tenants to pay their outstanding July 2010 rent within five days of receiving the notice to avoid eviction within ten days. The female tenant testified that she received these discontinued notices on the dates noted by the landlord. However, she said that the landlord provided only one of the five pages of the former notices to end tenancy. She testified that it had been difficult for her to determine her rights and responsibilities under the *Act*, given that the landlord had served only part of these notices on forms that were no longer in use.

The landlord testified that she sent both tenants copies of her application for dispute resolution by registered mail on July 9, 2010. She provided Canada Post Tracking Numbers. The female tenant confirmed that she received both copies of the application for dispute resolution and gave one of these to the male tenant. I am satisfied that the landlord served the application for dispute resolution to the tenants in accordance with the *Act*.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession? Is the landlord entitled to a monetary order?

Background and Evidence

This month-to-month tenancy commenced on March 1, 2007. The current rent is set at \$1,155.00, payable on the first of each month. The landlord testified that she continues to hold the tenants' security deposit of \$550.00 paid on March 15, 2007.

The landlord testified that the tenants have been frequently late in their rent payments. She referred to a breach letter issued to the tenants in April 2010. The landlord said that by April 2010 the female tenant told her that she was having difficulty paying the rent because the two tenants were encountering difficulties. The tenant advised the landlord that she was having to pay the rent on her own and that this presented a problem for her. The landlord testified that the tenant was late in paying her May rent, but the rent was eventually received for that month. She said that the female tenant paid \$500.00 towards the June rent, but owed \$655.00 by the end of that month. The landlord testified that she received no rental payment for July 2010. She said that she issued the notice to end tenancy for cause on July 1, 2010 due to the tenants' chronic late payment of rent. When no rent payment was made on July 1, 2010, she issued a notice to end tenancy for unpaid rent.

The landlord and the female tenant agreed that the landlord entered into a new agreement with the male tenant on August 6, 2010. The female tenant entered into evidence a copy of this agreement. In this agreement, the landlord and the male tenant confirmed that the male tenant would be assuming responsibility for paying the August 2010 rent and the outstanding unpaid rent of \$655.00 from June 2010 and \$1,155.00

from July 2010. The landlord testified that the male tenant paid \$1,500.00 on August 6, 2010, which included \$345.00 towards the unpaid June 2010 rent.

Since entering into the August 6, 2010 rental agreement with the male tenant, the landlord said that she wished to proceed with her application for dispute resolution to obtain an Order of Possession and a monetary order. The landlord's amended application for a monetary order of \$4,165.00 included requests for \$1,810.00 in unpaid rent for June and July 2010, \$1,155.00 for August 2010, and \$600.00 for painting costs that she believed would be required at the end of this tenancy.

Analysis

Order of Possession

The landlord did not provide copies of the two notices to end tenancy issued to the tenants on July 1, 2010 and July 2, 2010. The landlord did not dispute the tenant's testimony that the notices were served using old forms prepared by the Ministry of Attorney General when the Residential Tenancy Branch was a branch of that ministry. The tenant provided undisputed testimony that the landlord served her with one page of the five page notices and that it presented difficulty for the tenant in determining her rights and responsibilities under the *Act*.

I find that the landlord has served a form of Notice to End Tenancy that is not in accordance with the *Act*. I dismiss the landlord's claim for an Order of Possession.

Monetary Order

The female tenant testified that she does not dispute the landlord's evidence regarding the rent owing for June and July 2010. Based on the male tenant's August 6, 2010 payment of \$345.00 towards the June 2010 rent, the unpaid rent owing for June 2010 is \$315.00 and for July 2010 is \$1,155.00. The parties agree that the male tenant has paid \$1,155.00 in rent for August 2010, so this amount identified in the landlord's original application is no longer outstanding. I grant a monetary award for the unpaid rent from June and July 2010 in the amount of \$1,470.00.

I dismiss the remainder of the landlord's claim for a monetary order as the landlord has provided insufficient evidence to substantiate the remainder of her claim.

Although the landlord's application does not seek to retain the tenants' security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenants' security deposit plus interest in partial satisfaction of the monetary award.

Conclusion

I dismiss the landlord's application for an Order of Possession.

I grant the landlord a monetary order in the following terms.

Item	Amount
Unpaid June 2010 Rent	\$315.00
Unpaid July 2010 Rent	1,155.00
Less Security Deposit plus Interest (\$550.00 + \$14.95 = \$564.95)	-564.95
Total Monetary Order	\$905.05

The landlord is provided with these Orders in the above terms and the tenant(s) must be served with a copy of these Orders as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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*.