

DECISION

Dispute Codes OPR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord seeking an Order of Possession for unpaid rent, a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to keep the security deposit in partial satisfaction of their claim, and to recover the cost of the filing fee from the Tenant.

Service of the hearing documents was done in accordance with section 89 of the *Act*, sent via registered mail on April 26, 2010. The Canada Post tracking number was provided in the Landlord's evidence along with proof of delivery printed from the Canada Post website.

The Landlord appeared, gave affirmed testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form.

Issue(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 sections 38, 67, and 72 of the *Residential Tenancy Act*?

Background and Evidence

The month to month tenancy began on September 1, 2009 and ended March 31, 2010. Rent was payable on the first of each month in the amount of \$1,350.00 and the Tenant paid a security deposit in the amount of \$700.00 on September 1, 2009.

The Landlord testified and referred to his documentary evidence which included, among other things, a copy of the tenancy agreement and the Tenant's cheque for March 2010 rent which was returned NSF. After receiving notice of the NSF cheque the Landlord contacted the Tenant who advised he was returned to Alberta.

The Landlord attended the rental unit on March 30, 2010 and requested that the Tenant attend the move out inspection on March 31, 2010 and to return the keys. When the

Landlord attended the unit on March 31, 2010 the Tenant had already vacated and the keys were left inside the unit.

The Landlord withdrew his request for an Order of Possession and is seeking a Monetary Order for March 1, 2010 rent of \$1,350.00 less the \$700.00 security deposit plus the \$50.00 filing fee.

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 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 \$1350.00 for March 1, 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. Therefore I approve the Landlord's request for a monetary order for unpaid rent.

The Landlord has succeeded with his application, therefore I award recovery of the filing fee.

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 March 1, 2010	\$1350.00
Filing fee	50.00
Subtotal (Monetary Order in favor of the landlord)	\$1400.00
Less Security Deposit of \$700.00.plus interest of \$0.00	-700.00
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$700.00

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 **\$700.00**. 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: September 07, 2010.

Dispute Resolution Officer