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, were served in accordance of section 89 of the Act, via registered mail on July 21, 2010. Canada Post receipts were provided in the Landlord's evidence. The Tenant is deemed to have received the hearing documents on July 26, 2010, five days after they were mailed in accordance with section 90 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 fixed term tenancy began on June 1, 2009 and switched to a month to month tenancy after May 31, 2010. The current rent is due on the first of each month in the amount of $892.68 and the Tenant paid a security deposit of $410.00 on May 19, 2009.

A 10 Day Notice to End Tenancy was issued on July 2, 2010, due to an accumulated balance of $1,885.36 in unpaid rent. The Tenant has since made payments towards the accumulated balance and as of August 4, 2010 there was an outstanding balance of $1,013.04, as supported by the Tenant ledger provided in the Landlord's evidence.

The Landlord testified that the Tenant paid $500.00 on August 13, 2010, and $880.00 on September 1, 2010 which leaves a current balance owing of $525.72. ($1,013.04 – 500.00 + 892.68 – 880.00).

The Landlord has withdrawn her request for an Order of Possession and confirmed that the tenancy has been reinstated. They are seeking a monetary order for the balance of September 1, 2010, $525.72 plus recovery of the $50.00 filing fee.

<u>Analysis</u>

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 $525.72 for September 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 claim of $525.72.

The Landlord has succeeded with their claim; therefore I award recovery of the filing fee.

Monetary Order – I find that the Landlord is entitled to a monetary claim as follows:

Unpaid Rent for September 1, 2010	$525.72
Filing fee	50.00
TOTAL AMOUNT DUE TO THE LANDLORD	**$575.72**

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 **$575.72**. 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 09, 2010.

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Dispute Resolution Officer