

DECISION

Dispute Codes OPC OPR MNR FF
 CNR FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking an Order of Possession for unpaid rent and for Cause, a Monetary Order for unpaid rent and to recover the cost of the filing fee from the Tenant for this application.

The Tenant filed seeking an Order to cancel the notice to end tenancy for unpaid rent and to recover of the cost of the filing fee from the Landlord for this application.

Service of the original hearing documents by the Landlord to the Tenant was done in accordance with section 89 of the *Act*, sent via registered mail on June 29, 2010 and by posting a copy to the Tenant's door. A copy of the amended application was served by the Landlord to the Tenant via registered mail and by posting a copy on the Tenant's door on August 27, 2010.

The Landlord appeared, gave affirmed testimony, was 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 the Landlord's application in accordance with the *Act* and despite having his own application for dispute resolution scheduled for the same hearing date and time.

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 67 and 72 of the *Residential Tenancy Act*?

Is the Tenant entitled to an Order to cancel the Notice to End Tenancy for unpaid rent under section 46 of the *Residential Tenancy Act*?

Background and Evidence

The fixed term tenancy began on May 19, 2010, and is set to switch over to a month to month tenancy after May 31, 2011. Rent is payable on the first of each month in the amount of \$1,200.00 and the Tenant paid a security deposit of \$600.00 on May 19, 2010.

The Landlord referred to his documentary evidence which included among other things a detailed chronological list of dates when warning letters have been issued to the Tenant, copies of the warning or breach letters and e-mails which list the Tenant's behavior that has disturbed or significantly interfered with other tenants and seriously jeopardized the health or safety or lawful right of another tenant or the landlord, a copy of the 1 Month Notice to End Tenancy for Cause issued June 15, 2010, and a copy of the 10 Day Notice to End Tenancy for unpaid rent issued July 5, 2010.

The 1 Month Notice to End Tenancy was served by the Landlord to the Tenant when the Notice was posted to the Tenant's door on June 15, 2010. The 10 Day Notice to End Tenancy was served by the Landlord to the Tenant when it was posted to the Tenant's door on July 5, 2010.

The Landlord confirmed that the Tenant has failed to pay rent for July 2010, August 2010, and September 2010 for a total outstanding amount of \$3,600.00 and he is seeking a Monetary Order to recover the rent and an Order of Possession for as soon as possible.

Analysis

All of the testimony and documentary evidence was carefully considered.

Tenant's Application

Section 61 of the *Residential Tenancy Act* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the Director must determine if the hearing is to be oral or in writing. In this case, the hearing was scheduled for an oral teleconference hearing.

In the absence of the Applicant Tenant, the telephone line remained open while the phone system was monitored for ten minutes and no one on behalf of the Applicant Tenant called into the hearing during this time. Based on the aforementioned I find that the Tenant has failed to present the merits of his application and the application is dismissed, without leave to reapply.

The Tenant's application has been dismissed, therefore I decline to award recovery of the filing fee.

Landlord's Application

Given the evidence before me, in the absence of any evidence from the Tenant who did not appear despite being properly served with notice of this proceeding, I accept the version of events as discussed by the Landlord and corroborated by his evidence.

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*. The Tenant was served the Notice by posting it on his door on July 5, 2010, therefore the Notice is deemed to have been received by the Tenant on July 8, 2010, in accordance with section 90 of the *Act*. The Tenant was required to file his application to dispute the 10 Day Notice no later than July 13, 2010, five days after it was received. In this case the Tenant filed his application July 14, 2010.

Upon review of the 10 Day Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of the *Act* and I find that it was served upon the Tenant in a manner that complies with the *Act*. Upon consideration of all the evidence presented to me, I find the Landlord had valid reasons for issuing the Notice.

Section 55 of the *Act* provides that an Order of Possession must be provided to a Landlord if a Tenant's request to dispute a Notice to End Tenancy is dismissed and the Landlord makes an oral request for an Order of Possession during the scheduled hearing. Having dismissed the Tenant's application above, I hereby grant the Landlord an Order of Possession as requested.

Upon review of the 1 Month Notice to End Tenancy for Cause, I find the Notice to be completed in accordance with the requirements of the *Act* and I find that it was served upon the Tenant in a manner that complies with the *Act*. Upon consideration of all the evidence presented to me, I find the Landlord had valid reasons for issuing the 1 Month Notice to end Tenancy for Cause. The Landlord has been granted an Order of

Possession above, based on the 10 Day Notice to End Tenancy; therefore there is no need to issue an additional Order of Possession.

Claim for unpaid rent. The Landlord claims for the total unpaid rent of \$3,600.00 which is comprised of \$1,200.00 per month for July 1, 2010, August 1, 2010, and 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. Based on the aforementioned I hereby approve the Landlord's claim for unpaid rent.

Filing Fee \$50.00- I find that the Landlord has succeeded with their application and are entitled to recover the cost of the filing fee from the Tenant.

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 deposit as follows:

Unpaid Rent for July 1, 2010, August 1, 2010, and September 1, 2010 (3 x \$1,200.00)	\$3,600.00
Filing fee	<u>50.00</u>
Subtotal (Monetary Order in favor of the Landlord)	\$3,650.00
Less Security Deposit of \$600.00 plus interest of \$0.00	-600.00
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$3,050.00

Conclusion

Landlords' Application

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 **\$3,050.00**. The order must be served on the Respondent Tenant and is enforceable through the Provincial Court as an order of that Court.

Tenants' Application

The Tenant's application is HEREBY DISMISSED, without leave to reapply.

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 13, 2010.

Dispute Resolution Officer