

## **DECISION**

Dispute Codes      OPR MNR MNDC MNSD FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for unpaid rent and a Monetary Order for unpaid rent, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to keep the security deposit, 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 August 6, 2010. Mail receipt numbers were provided in the Landlord's evidence. The Tenant is deemed to be served the hearing documents on August 11, 2010, the fifth day after they were mailed as per section 90(a) of the *Act*.

The Agent for the Landlord appeared, was provided the opportunity to present their evidence orally, in writing, and in documentary form.

### Issues(s) to be Decided

Are the Landlords entitled to an Order of Possession pursuant to section 55 of the *Residential Tenancy Act*?

Are the Landlords entitled to a Monetary Order pursuant to sections 38, 67, and 72 of the *Residential Tenancy Act*?

### Background and Evidence

The month to month tenancy began January 1, 2009. Rent was payable on the first of each month in the amount of \$1,600.00 and the Tenant paid a security deposit of \$800.00 on January 1, 2009.

A 10 Day Notice to End Tenancy for Unpaid Rent in the amount of \$3,200.00 was served to the Tenant on July 22, 2010 when it was posted to the Tenant's door at 15:50 hrs.

The Agent confirmed the Tenant vacated the rental unit during the weekend of August 14, 2010 and that no payments have been made towards the rent since the issuance of the 10 Day Notice. The Landlord is withdrawing their request for an Order of Possession and loss of rent for September 2010 and wish to proceed with requesting a Monetary Order for unpaid rent in the amount of \$4,800.00 which is comprised of \$1,600.00 for each of the months of June 2010, July 2010, and August 2010. (3 x \$1,600.00)

### 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 \$4,800.00 at \$1,600.00 per month for June 2010, July 2010, and August 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 find the Landlord has proven their loss and are entitled to a Monetary Order.

The Landlord has succeeded with their claim; therefore I award recovery of the \$50.00 filing fee.

### 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 **\$4,850.00 (\$4,800.00 + \$50.00)**. 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 23, 2010.

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Dispute Resolution Officer