

## **DECISION**

Dispute Codes      OPR MNDC MNSD MNR

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for unpaid rent or utilities, a Monetary Order for unpaid rent or utilities, to keep all or part of the security and or pet deposit, and for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement.

Service of the hearing documents, by the Landlord to the Tenant were completed in person at the rental unit. The Tenant confirmed receipt of the hearing package.

The Landlord and Tenant appeared, gave affirmed testimony, were 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 pursuant to section 55 of the *Residential Tenancy Act*?

Is the Landlord entitled to a Monetary Order pursuant to section 67 of the *Residential Tenancy Act*?

### **Background and Evidence**

The month to month tenancy agreement was effective April 1, 2010. Rent is payable on the first of each month in the amount of \$1,500.00 and the Tenant paid a security deposit of \$750.00 on April 1, 2010.

The Landlord testified that he is seeking an Order of Possession for as soon as possible because the Tenant is not paying the full rent and is not paying the required 40 % of the cost of utilities. The tenancy agreement states that she is to pay 50% of the utilities but he verbally agreed to reduce the amount to help her out. He stated that to date the Tenant has only ever paid one payment towards utilities even though he always provides her with copies of the utility bills. He confirmed that the Tenant has made

payments towards rent, as listed below, and that he has issued a receipt for use and occupancy only as instructed by the staff at the *Residential Tenancy Branch*.

Date of Payment or Rent	Amount Paid	Balance Outstanding
June 1, 2010	\$1,279.00	\$221.00
July 1, 2010 Rent 1500.00		1721.00
July 2, 2010	1,075.00	646.00
July 4 or 5, 2010	365.00	281.00
August 1, 2010 Rent 1500		1781.00
August 6, 2010	300.00	1481.00
Sept. 1, 2010 Rent 1500.00		2981.00
Sept. 3, 2010	700.00	2281.00
September 5, 2010	300.00	<u>1981.00</u>
	<b>CURRENT RENT OWING</b>	<b>\$1,981.00</b>

The Landlord is also seeking to recover the costs of utilities which remain unpaid for the total amount of \$791.00 as supported by his documentary evidence.

The Tenant testified if and confirmed that she has not paid her rent in full. She is of the position that the Landlord should have to wait until she can get some money. She argued that she had to borrow money as her daughter is not currently working and that she will pay her rent when she can get some money.

### 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.

**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*, that the Tenant failed to pay the rent in full or apply to dispute the Notice within 5 days after receiving this Notice,

and that the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit to which the notice relates pursuant to section 46(5) of the *Act*. Therefore I approve the Landlord's request for an Order of Possession.

**Claim for unpaid rent.** The Landlord claims for the accumulated unpaid rent in the amount of \$1,981.00, 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. After reviewing the evidence I find the Landlord has proven his claim for unpaid rent in the amount of \$1,981.00.

**Unpaid utilities.** The evidence supports the Tenant has failed to pay \$791.00 in utilities as required in the tenancy agreement. Therefore in accordance with section 67 of the *Act* I approve the Landlord's claim of \$791.00 in unpaid utilities.

**Filing Fee \$50.00.** I find that the Landlord has succeeded with his claim and I hereby award recovery of the filing fee from the Tenant.

**Claim to keep all or part of security deposit.** I find that the Landlord's claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit of \$750.00 plus interest of \$0.00.

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

Accumulated Unpaid Rent between June 1, 2010 and September 30, 2010	\$1,981.00
Unpaid utilities up to August 4, 2010	791.00
Filing fee	50.00
Subtotal (Monetary Order in favor of the landlord)	<b>\$2,822.00</b>
Less Security Deposit of \$750.00 plus interest of \$0.00	-750.00
<b>TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD</b>	<b>\$2,072.00</b>

### Conclusion

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 **\$2,072.00**. 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 30, 2010.

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Dispute Resolution Officer