

DECISION

Dispute Codes OPR, MNR, MNDC, FF, MT, CNR, ERP, RP

Introduction

This hearing dealt with applications from the landlord and the tenant pursuant to the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent or money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy pursuant to section 66;
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent pursuant to section 46;
- an order to the landlord to make repairs and emergency repairs to the unit pursuant to section 33; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

The tenant did not attend this hearing. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that he handed the tenant a 10 Day Notice to End Tenancy for Unpaid Rent on August 6, 2010. He testified that he handed the tenant a copy of his application for dispute resolution on August 18, 2010. I am satisfied that the landlord served these documents to the tenant in accordance with the *Act*.

Rule 10.1 of the Rules of Procedure provides as follows:

10.1 Commencement of the hearing The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

Since the tenant did not attend the hearing, I dismiss his application without leave to reapply. I proceeded to hear the landlord's application for dispute resolution.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession? Is the landlord entitled to a monetary Order for unpaid rent? Is the landlord entitled to recover his filing for this application from the tenant?

Background and Evidence

The landlord testified that this periodic tenancy commenced on April 1, 2010. Monthly rent was set at \$1,450.00, payable on the first of each month. The landlord testified that he continues to hold the tenant's \$725.00 security deposit plus interest paid on March 19, 2010.

The landlord said that the tenant paid \$1,000.00 of the \$1,450.00 owing for the August 2010 rent on or about August 3 or 4, 2010. He said that \$450.00 remains owing from that month, but the tenant has paid all of his September and October 2010 rent. The landlord said that the tenant pays his rent directly to the landlord's bank account. The landlord requested an Order of Possession for unpaid rent and a monetary Order for the \$450.00 still owing from August 2010.

Analysis

Order of Possession

Based on the evidence presented by the landlord, I find that the landlord continued this tenancy and set aside the 10 Day Notice to End Tenancy for Unpaid Rent by accepting the tenant's rental payments without advising him that he was doing so for use and occupancy only. I dismiss the landlord's application for an Order of Possession for Unpaid Rent.

Monetary Order

I am satisfied that the tenant continues to owe the landlord \$450.00 in rent from August 2010. I issue a monetary award in the landlord's favour for this amount.

Although the landlord did not apply to be allowed to retain a portion of the tenant's security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security deposit plus interest in satisfaction of the monetary award for unpaid rent of \$450.00 and to recover the landlord's \$50.00 filing fee for this application. No interest is payable over this period. I order the landlord to retain \$500.00 from the tenant's security deposit to satisfy this monetary award.

Conclusion

I dismiss the tenant's application without leave to reapply. I dismiss the landlord's application for an Order of Possession. I allow the landlord's application for a monetary award of \$450.00 for unpaid rent and the landlord's application to recover his \$50.00 filing fee from the tenant. I order the landlord to retain \$500.00 from the tenant's security deposit to satisfy the monetary award granted in this decision.

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*.