

DECISION

Dispute Codes OPR MNR MNSD MNDC FF
 CNR LRE

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, a Monetary Order for unpaid rent, to keep the security deposit, for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement, 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 obtain an Order to restrict the Landlord's access to the rental unit.

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 August 28, 2010 and by posting a copy to the Tenant's door on the same date. Canada Post receipt numbers were provided in the Landlord's testimony. The Tenant is deemed to have been served the hearing documents on September 1, 2010, five days after they were mailed, in accordance with section 89 of the *Act*.

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 her 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*?

Is the Tenant entitled to an Order to restrict the Landlord's access in accordance with section 70 of the *Residential Tenancy Act*?

Background and Evidence

The fixed term tenancy began June 1, 2010 and was set to switch to a month to month tenancy after October 29, 2010. Rent was payable on the first of each month in the amount of \$775.00 and the Tenant paid a security deposit of \$387.50 on April 29, 2010.

The Property Manager testified that the Tenant vacated the rental unit on October 3, 2010. The Landlord confirmed they are withdrawing their request for an Order of Possession as they have regained possession of the unit.

The Landlord stated that when the Tenant failed to pay her August 2010 rent in full a 10 Day Notice to End Tenancy was issued and posted to the Tenant's door on August 4, 2010. The Tenant paid \$375.00 in a cheque and \$12.35 in cash prior to the issuance of the 10 Day Notice which left a balance owing of \$387.65 for August 2010. No payments have been received for September or October 2010 rent which brings the total unpaid rent to \$1,937.65. (\$387.65 + \$775.00 + \$775.00)

Analysis

All of the testimony and documentary evidence was carefully considered.

Landlord's Application

I find that in order to justify payment of damages under sections 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 pursuant to section 7.

Order of Possession - The Landlord has withdrawn his request for Orders of Possession.

Claim for unpaid rent. The Landlord claims for unpaid rent of \$1,937.65 which includes the balance due for August 2010, and the full rent for September and October, 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. I find that the Landlord has proven the test for loss as listed above and I hereby approve their 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 Tenants' security deposit, as follows:

Accumulated unpaid Rent for August, September, October 2010	\$1,937.65
Filing fee	50.00
Subtotal (Monetary Order in favor of the Landlord)	\$1,987.65
Less Security Deposit of \$387.50 plus interest of \$0.00	-387.50
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$1,600.15

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 their application and the application is dismissed, without leave to reapply.

Conclusion

Landlords' Application

A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$1,600.15**. The order must be served on the 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: October 05, 2010.

Dispute Resolution Officer