

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) 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;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenant 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 said that she posted the 10 Day Notice to End Tenancy for Unpaid Rent on the tenant's door on July 28, 2010. She said that she sent the tenant a copy of her application for dispute resolution hearing package by registered mail on August 21, 2010. She provided a confirming Canada Post Tracking Number. I am satisfied that the landlord has served these documents to the tenant in accordance with the *Act*.

The landlord said that the tenant vacated the rental premises on or about August 31, 2010. I dismissed her application for an Order of Possession as she said that she no longer needed one.

Issues(s) to be Decided

Is the landlord entitled to a monetary Order for unpaid rent and loss incurred during this tenancy? Is the landlord allowed to retain the tenant's security deposit in partial satisfaction of the monetary Order requested? Is the landlord entitled to recover the cost of the filing fee for this application from the tenant?

Background and Evidence

The landlord testified that the tenant moved into the rental premises on May 1, 2008. At that time, the tenant was employed by the landlord as a business manager. The landlord continues to hold the \$100.00 security deposit paid by the tenant on May 6, 2008. The landlord said that the present tenancy commenced on July 9, 2010. The tenant was supposed to pay \$1,259.00 in rent on the first of each month. The landlord testified that the tenant did not pay \$893.42 owing for the remainder of July 2010. She said that he did not pay any of the \$1,259.00 owing for August 2010. She said that she was unable to rent these premises to anyone else after the tenant moved out, noting that repairs were necessary after he left the rental unit. In addition to the unpaid rent for July and August 2010, the landlord asked for reimbursement of \$25.00 late rental payment fees for July and August 2010. She also requested a monetary Order for the loss of rent for September 2010. She asked to be allowed to keep the tenant's security deposit plus interest. She asked for recovery of her filing fee for this application.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must 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 other party.

Based on the undisputed evidence presented by the landlord, I issue a monetary Order in the landlord's favour for the unpaid rent in July and August 2010, and the loss of rent for the month of September 2010. As the landlord did not present evidence from the residential tenancy agreement regarding the landlord's authority to charge a late fee, I dismiss the landlord's application for late fee payments for July and August 2010. I allow the landlord to retain the tenant's security deposit plus interest from this monetary Order. As the landlord has been successful in this application, I allow the landlord to recover the \$50.00 filing fee from the tenant.

Conclusion

I dismiss the landlord's application for an Order of Possession. I grant a monetary Order in the landlord's favour in the following terms which allows the landlord to retain the tenant's security deposit and to recover her filing fee for this application:

Item	Amount
Unpaid July 2010 Rent	\$893.42
Unpaid August 2010 Rent	1,259.00
Loss of September 2010 Rent	1,259.00
Less Security Deposit plus interest \$100.00 + 0.98 = \$100.98	-100.98
Recovery of Filing Fee for this application	50.00
Total Monetary Award	\$3,360.44

The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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*.