

DECISION

Dispute Codes OPR MND MNR MNSD MNDC 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, damage to the unit, to keep all of 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 Tenants for this application.

Service of the hearing documents, by the Landlord to each Tenant, was done via registered mail on August 23, 2010. Mail receipt numbers were provided in the Landlord's evidence. The Tenants are deemed to be served the hearing documents on August 28, 2010, the fifth day after they were mailed as per section 90(a) of the *Act*.

The Landlord 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 sections 38, 67, and 72 of the *Residential Tenancy Act*?

Background and Evidence

The fixed term tenancy agreement began on March 1, 2010 and was set to switch to a month to month tenancy after February 28, 2011. Rent was payable on the first of each month in the amount of \$2,000.00 and the Tenants paid a security deposit of \$1,000.00 on February 26, 2010.

The Landlord testified that when the Tenants failed to pay the August 1, 2010 rent a 10 Day Notice to End Tenancy was issued and posted to the Tenants' door on August 9, 2010. The Tenants vacated the rental unit on September 16, 2010 and the unit was re-rented as of October 1, 2010.

The Landlord confirmed that they are withdrawing their request for an Order of Possession and are currently seeking a monetary order for August and September 2010 rent totalling \$4,000.00 (2 x \$2,000.00), parking fees for August and September 2010 of \$100.00 (2 x \$50.00 as provided on the tenancy agreement) plus late payment fees for August and September 2010 of \$40.00 (2 x \$20.00 as provided for under section 3(a) of the tenancy agreement), for a total claim of \$4,140.00.

Analysis

Given the evidence before me, in the absence of any evidence from the Tenants who did not appear despite being properly served with notice of this proceeding, I accept the version of events as discussed by the Landlord and corroborated by their documentary evidence which included among other things a copy of the 10 Day Notice to End Tenancy, a copy of the tenancy agreement, and copies of the Canada Post registered mail receipts.

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.

Claim for unpaid rent. The Landlord claims for unpaid rent of \$4,000.00 at \$2,000.00 per month for August 2010 and September 2010, pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due. I find that the Tenants have 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 loss in the amount of \$4,000.00

Claim for parking fees. The tenancy agreement provides that the Tenants are responsible to pay \$50.00 per month for parking. The evidence supports that the Tenants failed to pay the parking fee for the months of August 2010 and September 2010. Therefore I find the Landlord is entitled to a monetary claim of \$100.00 for parking.

Claim for late payment fees. Section 3 (a) provides that the Tenants will be charged a non-refundable late payment fee of \$20.00 in accordance with section 7 of the *Residential Tenancy Regulation*. The evidence supports the Tenants did not pay their rent on time for August 2010 or September 2010 therefore the Landlord has provided sufficient evidence of their entitlement to late payment fees totaling \$40.00 (2 x \$20.00).

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

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:

Unpaid Rent for August 2010 and September 2010 (2 x \$2,000.00)	\$4,000.00
Unpaid parking for August and September 2010 (2 x \$50.00)	100.00
Late payment fees for August and September 2010 (2 x \$20.00)	40.00
Filing fee	50.00
Subtotal (Monetary Order in favor of the landlord)	\$4,190.00
Less Security Deposit of \$1,000.00 plus interest of \$0.00	-1,000.00
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$3,190.00

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 **\$3,190.00**. The order must be served on the Respondent Tenants 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: October 13, 2010.

Dispute Resolution Officer