

DECISION

Dispute Codes OPR, MNR, FF

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 pursuant to section 67; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that she posted the 10 Day Notice to End Tenancy for Unpaid Rent on the tenant's door on September 1, 2010. The landlord testified that she sent a copy of her application for dispute resolution to the tenant by registered mail on September 17, 2010. The tenant testified that she received both of these documents. I am satisfied that service of these documents was provided in accordance with the *Act*.

The parties agreed that the tenant vacated the rental premises on October 15, 2010 or October 16, 2010. As such, the landlord said that she no longer required an Order of Possession.

Issues(s) to be Decided

Is the landlord entitled to a monetary Order for unpaid rent? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This periodic tenancy commenced on May 7, 2010. Monthly rent was set at \$600.00 per month, payable on the first of each month. The landlord continues to hold the tenant's \$300.00 security deposit plus interest, paid on May 7, 2010.

The parties agreed that the tenant has not paid rent for the months of August, September and October 2010. The tenant testified that she left the community for several weeks at the end of September. She said that when she returned on October 15, 2010, she discovered that the landlord had removed her possessions from the rental unit and changed the locks. The tenant also said that the landlord had attempted to evict her for landlord use of the rental unit by way of a July 1, 2010 handwritten note, asking her to leave by September 1, 2010. She said that she had originally planned to leave the rental unit by that date. She testified that the landlord committed to letting her stay at the rental unit for the last month without paying rent as is required when a rental unit is converting to landlord use. However, both parties agreed that the tenant did not accept the legality of the landlord's handwritten notices to end tenancy for landlord use of the property, and required any eviction notice be provided on the standard Residential Tenancy Branch forms.

Analysis

In these circumstances, I find that the landlord is entitled to a monetary award for the two months requested in her application, August and September 2010. The tenant challenged the landlord's July 1, 2010 handwritten eviction note and was in fact correct in maintaining that the landlord's attempt to end tenancy for landlord use on that date had no legal effect. As the landlord's July 2010 attempt to end this tenancy had no legal effect, similarly the landlord's requirement to allow the tenant to stay at the rental unit for one month rent free also has no legal effect.

I limit the monetary award to August and September 2010 as I accept the tenant's undisputed testimony that the landlord removed her belongings from the rental unit after she left town in late September 2010 and changed the locks without obtaining an order to be allowed to do so. At that time, the landlord had applied for an Order of Possession, which was to be considered at this hearing. I find that the landlord is not entitled to a monetary award for unpaid rent in October 2010.

The landlord testified that she continued to hold the tenant's \$300.00 security deposit plus interest paid on May 7, 2010. Over that period, no interest is payable. Although the landlord's application does not seek to retain the security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security deposit in partial satisfaction of the monetary award. As the landlord was successful in her application, I allow her to recover her filing fee for this application from the tenant.

Conclusion

I grant a monetary Order in the following terms for unpaid rent and recovery of the landlord's filing fee:

Item	Amount
Unpaid August 2010 Rent	\$600.00
Unpaid September 2010 Rent	600.00
Less Security Deposit	-300.00
Recovery of Filing Fee for this application	50.00
Total Monetary Award	\$950.00

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*.