



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR OPB MNMR FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for unpaid rent and breach of an agreement, a Monetary Order for unpaid rent or utilities, and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents was conducted in person by the Landlord to the Tenant at the rental unit on October 20, 2010.

The Landlord appeared, gave affirmed testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form. No one attended on behalf of the Tenant despite the Tenant being served notice of today's hearing in accordance with the Act.

Issues(s) to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to a Monetary Order for unpaid rent?
3. Is the Landlord entitled to recover the filing fee?

Background and Evidence

The month to month tenancy began on April 1, 2010. Rent was payable on the first of each month in the amount of \$600.00. The Tenant paid a security deposit of \$300.00 on April 15, 2010.

The Landlord testified that when the Tenant failed to pay his September 2010 rent a 10 Day Notice to End Tenancy was served to the Tenant October 5, 2010, when it was posted to the Tenant's door.

The Landlord confirmed that he no longer requires an Order of Possession as the Tenant vacated the rental unit as of November 1, 2010. The Landlord stated that the Tenant told him to keep the security deposit as a partial rent payment. The Landlord is seeking a monetary order for the \$300.00 balance owing of September 2010 rent plus the \$600.00 for October 2010 rent.

Analysis

Given the evidence before me, in the absence of any evidence from the Tenant who did not appear despite being properly served with notice of this proceeding, I accept the version of events as discussed by the Landlord.

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.

Order of Possession. The Landlord has withdrawn his request for an Order of Possession as the Tenant has vacated the rental unit.

Claim for unpaid rent. The Landlord claims for unpaid rent of \$600.00 for September 2010 and \$600.00 for October 2010 and requested that the security deposit be offset against his claim. Section 26 of the *Act* 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. After reviewing the evidence I find the Landlord has proven his claim for unpaid rent of \$1,200.00.

I find that the Landlord's claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit of \$300.00 plus interest of \$0.00.

Filing Fee \$50.00. I find that the Landlord has succeeded with his claim and I hereby award recovery of the filing fee from the Tenant.

Monetary Order – I find that the Landlord is entitled to a monetary claim as follows:

Unpaid Rent for September and October 2010 (2 x \$600.00)	\$1,200.00
Subtotal (Monetary Order in favor of the landlord)	\$1,250.00
Less Security Deposit of \$300.00 plus interest of \$0.00	-300.00
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$950.00

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 **\$950.00**. The order must be served on the Respondent Tenant 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: November 16, 2010.

Dispute Resolution Officer