



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR 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, a Monetary Order for unpaid rent or utilities, to keep all or part of the security deposit, for money owed or compensation for damage or loss under the Act, and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents, by the Landlord to each Tenant, were served in accordance with section 89 of the Act, via registered mail on October 26, 2010. Canada Post receipts were provided in the Landlord's evidence. The Tenants are deemed to have received the hearing documents October 31, 2010, five days after they were mailed in accordance with section 90 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 attended on behalf of the Tenants despite them 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 to the rental unit?
2. Has the Landlord proven entitlement to a monetary order for unpaid rent?

Background and Evidence

The Landlord confirmed the parties entered into a fixed term tenancy agreement effective January 1, 2009 which switched to a month to month tenancy after December 31, 2009. Rent is payable on the first of each month in the amount of \$1,200.00. The Tenants paid a security deposit of \$600.00 on December 19, 2008.

The Landlord testified that when the Tenants failed to pay the October 1, 2010 rent a 10 Day Notice was issued and posted to their door on October 2, 2010. On October 4, 2010, the Tenants paid \$1,000.00 towards the outstanding balance of \$1,220.00 for which the Landlord issued a receipt for "use and occupancy only". The Landlord confirmed the Tenants are still occupying the unit and have not made any additional payments to the outstanding balance or towards November 1, 2010 rent. The accumulated balance owing is now \$1,440.00 which includes the \$220.00 balance due from October 2010, plus \$1,200.00 for November 1, 2010 rent and \$20.00 late payment fee for November 2010. The Landlord is seeking an Order of Possession and the Monetary Order.

Analysis

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. I find that the Landlord has met the requirements for the 10 day notice to end tenancy pursuant to section 46(1) of the *Act*, that the Tenants failed to pay the rent or apply to dispute the Notice within 5 days after receiving this Notice, and that the Tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit to which the notice relates pursuant to section 46(5) of the *Act*. Therefore I approve the Landlord's request for an Order of Possession.

Claim for unpaid rent. The Landlord claims for the accumulated unpaid rent and late payment fees of \$1,440.00, pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due and section 7 of the Regulations which states that a landlord may claim late payment fees as long as they are provided for in the tenant agreement. This tenancy agreement provided for late payment fees under number 3 of the agreement. 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. Based on the aforementioned I find the Landlord has proven their claim for damage or loss, as listed above, in the amount of \$1,440.00.

Filing Fee \$50.00. I find that the Landlord has succeeded with their 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 and I find 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 and late payment fees	\$1,440.00
Subtotal (Monetary Order in favor of the landlord)	\$1,490.00
Less Security Deposit of \$600.00 plus interest of \$0.32	-600.32
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$889.68

Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenant**. This order must be served on the Respondent Tenants and may be filed in the Supreme Court and enforced as an order of that Court.

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 **\$889.68**. 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: November 22, 2010.

Dispute Resolution Officer