

DECISION

Dispute Codes OPR, MNR, FF

Introduction

The landlord applied 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 her 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 sent the tenant her dispute resolution hearing package on October 29, 2010 by registered mail. She provided the Canada Post Tracking Number to confirm this mailing. The tenant confirmed receiving this hearing package from the landlord. I am satisfied that the landlord served this material to the tenant in accordance with the *Act*.

At the commencement of the hearing, I enquired as to the landlord's application. I did so because she cited in her application a previous decision and orders of a Dispute Resolution Officer (DRO) that was rendered on August 17, 2010. The landlord confirmed that this was a different application for a monetary Order for unpaid rent that has accrued since July 1, 2010. She confirmed that she had an existing Order of Possession from the DRO who issued the August 17, 2010 decision which would appear to still be valid. She withdrew her application for an Order of Possession on this basis and limited her present application to her request for a monetary award for unpaid rent of the five months from July 2010 until November 2010, and recovery of her filing fee for this application.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent from July 2010 until November 2010? Is the landlord entitled to recover her filing fee for this application from the tenant?

Background and Evidence

This periodic tenancy commenced on November 1, 2006. No written tenancy agreement was prepared for this tenancy. The tenant is required to pay \$1,900.00 in monthly rent on the first of each month.

The landlord and her husband testified that the tenant was supposed to pay a security deposit of one full month's rent as a security deposit. However, the landlord's husband said that the tenant was unable to pay the requested \$1,900.00 security deposit, but paid \$800.00 in U.S. funds instead. The tenant testified that she did pay the requested \$1,900.00 security deposit in November 1, 2006. After discussion between the parties, the landlord and her husband agreed that since their records on this payment are unclear, they will accept that she paid a \$1,900.00 security deposit when she moved into the rental unit and that they continue to hold this amount.

Much of the discussion at the hearing involved the circumstances surrounding the landlord's actions to obtain the \$12,681.12 monetary Order she obtained as a result of the August 17, 2010 hearing of the landlord's previous application. The tenant initially maintained that some of the funds obtained by the landlord and the bailiff acting to obtain the landlord's judgement were directed to rent payments from July 2010 until November 2010. The tenant subsequently gave sworn testimony to confirm the landlord's allegation that she has paid no rent from July 2010 until the present.

Analysis

I issue the landlord a monetary award of \$1,900.00 per month for the five months involved in her application. I allow the landlord to retain the tenant's security deposit of \$1,900.00 plus interest from November 1, 2006, in partial satisfaction of this monetary award. As the landlord has been successful in her application, I allow her to recover her filing fee for this application from the tenant.

Conclusion

I issue a monetary Order in the following terms which allows the landlord unpaid rent for five months, authorization to retain the tenant's security deposit plus interest, and recovery of her filing fees from the tenant.

Item	Amount
Unpaid July 2010 Rent	\$1,900.00
Unpaid August 2010 Rent	1,900.00
Unpaid September 2010 Rent	1,900.00
Unpaid October 2010 Rent	1,900.00
Unpaid November 2010 Rent	1,900.00
Less Security Deposit Plus Interest (\$1,900.00 + \$59.12 = \$1,959.12)	-1,959.12
Recovery of Filing Fee for this application	100.00
Total Monetary Order	\$7,640.88

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*.