

DECISION

Dispute Codes OPR, MNR, MNSD, 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;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenants did not attend this hearing, although I waited until 11:18 a.m. in order to enable the tenant to connect with this hearing. The landlord's agent (the landlord) attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that he handed the female tenant (LT) a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on January 10, 2011. He provided a copy of a signed statement from Tenant LT attesting to this service of the Notice. The landlord said that he sent the tenants a copy of the dispute resolution hearing package by registered mail on February 11, 2011. He provided a Canada Post Tracking Number to confirm this mailing. I am satisfied that the landlord served the above documents in accordance with the *Act*.

At the commencement of the hearing, the landlord said that the tenants vacated the rental premises by January 25, 2011. As such, the landlord said that he no longer required an Order of Possession.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to retain the tenants' security deposit in partial satisfaction of the monetary Order requested? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This one-year fixed term tenancy commenced on February 25, 2010. Monthly rent was set at \$1,090.00, payable on the first of each month. The landlord continues to hold the tenants' \$545.00 security deposit paid in two instalments (i.e., \$410.00 on February 28, 2010; \$135.00 paid on March 11, 2010). Although the Residential Tenancy Agreement also required that the tenants pay a \$545.00 pet damage deposit, the landlord testified that the tenants never paid this deposit.

The landlord testified that the tenants vacated the rental unit on or about January 25, 2011, after receiving the landlord's Notice to end this tenancy.

The landlord applied for a monetary award of \$3,815.00 for unpaid rent arising out of this tenancy. He submitted a detailed breakdown of this amount dating from May 2010 into written evidence. At the hearing, the landlord revised the amount of the monetary award requested in this application to \$3,320.00 which included recovery of the landlord's filing fee for this application. The landlord said that this revision resulted from a \$1,900.00 payment made by the tenants in November 2010, which was \$810.00 more than the November 2010 monthly rent. The landlord said that he had not properly accounted for this amount in the original application and also recognized that there was no purpose in adding the amount of the unpaid pet damage deposit to the monetary award requested as the tenancy has now ended.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must 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 other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Based on the undisputed written evidence presented by the landlord and the landlord's oral testimony, I am satisfied that the landlord is entitled to a monetary award for unpaid rent arising out of this tenancy from May 1, 2010 until the end of this tenancy. I have reviewed the detailed calculations submitted by the landlord and am satisfied that the landlord is entitled to a monetary award of \$3,270.00.

I allow the landlord's request to retain the tenants' security deposit plus interest in partial payment of this monetary award. No interest is payable over this period. Since the landlord has been successful in this application, I allow the landlord to recover the \$50.00 filing from the tenants.

Conclusion

I issue a monetary Order in the landlord's favour in the following terms which allows the landlord to recover unpaid rent and the filing fees for this application and enables the landlord to retain the tenants' security deposit.

Item	Amount
Unpaid Rent Arising from this Tenancy	\$3,270.00
Less Security Deposit	-545.00
Recovery of Filing Fee for this application	50.00
Total Monetary Order	\$2,775.00

The landlord is provided with these Orders in the above terms and the tenant(s) must be served with a copy of these Orders as soon as possible. Should the tenant(s) 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*.