



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR MNR 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, and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents, by Landlord to the Tenant, was done in accordance with section 89 of the *Act*, served personally to the Tenant on February 17, 2011 in the presence of a witness.

The Landlord appeared, gave affirmed testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Has the Tenant breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, has the Landlord proven entitlement to an Order of Possession and a Monetary Order as a result of that breach?

Background and Evidence

The parties entered into a month to month tenancy agreement effective February 1, 2010. Rent was payable on the first of each month in the amount of \$800.00 and on January 30, 2010 the Tenant paid \$275.00 as the security deposit and \$100.00 as the pet deposit for the total deposits of \$375.00.

When the Tenant failed to pay his rent in full a 10 Day Notice to End Tenancy posted to his door on February 4, 2011 for the outstanding amount of \$650.00. The Landlord

testified the Tenant vacated the property February 28, 2011 so he is withdrawing his request for an Order of Possession. He is seeking to monetary compensation for the unpaid rent \$650.00 less the security deposit.

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 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 withdrew his request for an Order of Possession.

Claim for unpaid rent - The Landlord claims for the accumulated unpaid rent of \$650.00, pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due. I find that the Tenant has failed to comply with a standard term of their tenancy agreement which stipulates that rent is due monthly on the first of each month; therefore I approve the Landlords' claim of **\$650.00**.

The Landlord has been successful with his application therefore I award recovery of the **\$50.00** filing fee.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit as follows:

Accumulated Unpaid Rent	\$650.00
Filing fee	50.00
Subtotal (Monetary Order in favor of the landlord)	\$700.00
Less Security Deposit of \$275.00 plus pet deposit of \$100.00	- 375.00
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$325.00

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 **\$325.00**. The order must be served on the respondent and is enforceable through the Provincial Court and enforced 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: March 15, 2011.

Residential Tenancy Branch