

## **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 tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 2:45 p.m. in order to enable the tenants to connect with this hearing. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

The landlord entered into written evidence a copy of the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) that the landlord said he handed to the tenants on May 11, 2011. The landlord testified that he sent a copy of the dispute resolution hearing package to both of the tenants by registered mail on August 7, 2011. He provided copies of Canada Post Tracking Numbers to confirm this mailing. I am satisfied that the landlord served these documents to the tenants in accordance with the *Act*.

At the commencement of the hearing, the landlord testified that the tenants vacated the rental unit by September 4, 2011. As such, the landlord advised that he was withdrawing his application for an end to this tenancy and an Order of Possession. He said that he did not receive any September 2011 rent from the tenants and asked that his application for a monetary award be revised to include a request for unpaid rent for September 2011. I agreed to add consideration of unpaid rent for September 2011 to the landlord's application.

### Issues(s) to be Decided

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

### Background and Evidence

This periodic tenancy commenced on June 1, 2007. Monthly rent by the end of this tenancy was set at \$910.00, payable in advance on the first of each month. The landlord continues to hold the tenants' \$440.00 security deposit paid on May 7, 2011.

The landlord applied for a monetary award of \$3,620.00, which included the following items:

Item	Amount
Outstanding May 2011 Rent	\$820.00
Unpaid June 2011 Rent	910.00
Unpaid July 2011 Rent	910.00
Unpaid August 2011 Rent	910.00
Recovery of Filing Fee	50.00
<b>Total Monetary Award Requested</b>	<b>\$3,600.00</b>

To this amount, the landlord requested \$910.00 for September 2011 and \$221.78 in unpaid utilities.

### Analysis

The landlord testified that the tenants paid \$500.00 on May 27, 2011 and \$500.00 on June 10, 2011, accepted by the landlord for use and occupancy only. The landlord provided calculations that demonstrated that this \$1,000.00 in payments was applied to unpaid rent from April 2011 and applied to a portion of the unpaid rent for May 2011. I am satisfied by the oral and written evidence provided by the landlord that the landlord is entitled to a monetary award for unpaid rent from May 2011 up to and including September 2011. I allow the landlord's request for unpaid rent for September 2011, as the landlord did not obtain vacant possession of the rental unit until September 4, 2011, and has commenced efforts to re-rent the premises. The landlord testified that considerable cleanup of material left behind by the tenants was required which has made the task of re-renting the premises for September 2011 more difficult.

I am not satisfied that the tenants were properly notified that the landlord was seeking recovery of unpaid utility bills arising out of this tenancy. For that reason, I am dismissing the landlord's oral request to include consideration of unpaid utilities with leave to reapply.

I allow the landlord to retain the tenants' security deposit plus interest in partial satisfaction of the monetary award issued in this decision.

Since the landlord was successful in this application, I allow the landlord to recover the filing fee for this application from the tenants.

### Conclusion

I issue a monetary award in the following terms which allows the landlord to recover unpaid rent and his filing fee and to retain the tenants' security deposit:

<b>Item</b>	<b>Amount</b>
Outstanding May 2011 Rent	\$820.00
Unpaid June 2011 Rent	910.00
Unpaid July 2011 Rent	910.00
Unpaid August 2011 Rent	910.00
Unpaid September 2011 Rent	910.00
Recovery of Filing Fee	50.00
Less Security Deposit plus Interest (\$440.00 + \$10.98 = \$450.98)	-450.98
<b>Total Monetary Order</b>	<b>\$4,059.02</b>

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.

The landlord has withdrawn his request for an Order of Possession. I dismiss the landlord's oral request for a monetary award for unpaid utilities as this issue was not part of the landlord's application for dispute resolution. The landlord is at liberty to reapply for a monetary award for unpaid utilities.

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*.