



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords seeking an Order of Possession for unpaid rent, a Monetary Order for unpaid rent, to keep the security deposit in partial satisfaction of their claim, for money owed for compensation for damage or loss under the Act, regulation, or tenancy agreement, and to recover the cost of the filing fee from the Tenant.

The parties appeared at the teleconference hearing, submitted by the other and gave affirmed testimony. During the hearing each party was given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Has the Tenant breached the *Residential Tenancy Act*, Regulation and/or tenancy agreement?
2. If so, have the Landlords met the burden of proof to obtain an Order of Possession and a Monetary Order pursuant to sections 55 and 67 of the *Residential Tenancy Act*?

Background and Evidence

The Landlords affirmed the tenancy began in early 2008, the current rent is \$440.00 payable on the first of each month, and in February 2008 the Tenant paid \$186.00 as the security deposit.

The Tenant affirmed he received the 10 Day Notice to End Tenancy, and that he has not paid rent for over a year. He stated "I am guilty; I have not paid rent so you can through the book at me".

The Landlords requested an Order of Possession effective immediately.

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 – I have reviewed the aforementioned and all documentary evidence and accept that the Tenant has been served with a 10 Day Notice to end tenancy as declared by the Landlord. The notice was received by the Tenant on February 2, 2012, and the date, and the effective date of the notice is February 12, 2012, pursuant to section 90 of the *Act*. I accept the evidence before me that the Tenant has failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

Based on the foregoing, I find that the Tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice and I hereby grant the Landlord an Order of Possession.

Claim for unpaid rent - The Landlord claims for unpaid rent of \$6,691.00 which is comprised of unpaid rent up to the end of February 2012, 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 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 met the burden of proof and I award them a monetary claim of **\$6,691.00** for unpaid rent.

Filing Fee - The Landlord has succeeded with their application and therefore I award recovery of the **\$100.00** 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 plus interest as follows:

Unpaid Rent	\$6,691.00
Filing Fee	<u>100.00</u>
SUBTOTAL	\$6,791.00
LESS: Security Deposit \$186.00 + Interest 2.55	<u>-188.55</u>
Offset amount due to the Landlord	<u>\$6,602.45</u>

Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenant**. This Order is legally binding and must be served upon the Tenant.

The Landlord's decision will be accompanied by a Monetary Order for **\$6,602.45**. This Order is legally binding and must be served upon the Tenant.

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: February 28, 2012.

Residential Tenancy Branch