

DECISION

Dispute Codes CNR OPR MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a notice to end tenancy for unpaid rent and an Application for Dispute Resolution by the landlord for an Order of Possession, and a monetary claim for unpaid rent, to keep the damage deposit and to recover the cost of the filing fee from the tenant.

The hearing documents were sent by the tenant to the landlord via Fedex on approximately March 18, 2009. The landlord confirmed delivery of the Fedex package on approximately March 20, 2009.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on April 3, 2009 as supported by documentary evidence of the Canada Post Receipt.

Both the landlord and tenant appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross exam each other.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

The issues to be decided based on the testimony and the evidence are:

- Whether the tenant is successful in their request to cancel a Notice to End Tenancy
- Whether the landlord is entitled to an Order of Possession under Section 55 of the *Act* for unpaid rent

- Whether the landlord is entitled to a Monetary Order under section 67 of the *Act* for unpaid rent and to keep the security deposit

Background and Evidence

The tenancy is a month to month tenancy which began on February 1, 2009 with rent of \$1,575.00 being payable on the first of each month. The tenant paid a security deposit of \$787.50 on January 17, 2009.

The landlord testified that the tenant has not paid the March or April 2009 rent with the current arrears totalling \$3,150.00. The landlord advised that a 10 Day Notice to End tenancy was served to the tenant via registered mail on March 18, 2009 and submitted the Canada Post Receipt as evidence. The landlord testified that he is requesting an Order of Possession effective as soon as possible.

The tenant testified and confirmed that she has not paid March or April 2009 rent. The tenant stated that she was aware the landlord was proceeding with having her evicted so she applied to cancel the notice March 13, 2009, before the notice was even served on her. The tenant stated that she is disabled and that Social Assistance would not approve her rent stating that it was too high. The tenant stated that she was sorry to put any of the landlords through this and that she had hoped that she could continue to stay in the rental unit as it is a central location for her children.

Analysis

The tenant has admitted that she has not paid rent for March or April, 2009, and that she has no source of income to pay for the rent. Section 46 (1) of the *Residential Tenancy Act* stipulates that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving the required notice.

Based on the above I find that the landlord is entitled to an Order of Possession effective two days upon service of the Order to the tenant.

By the tenant's own admission she owes the landlord rent of \$1,575.00 for March and \$1,575.00 for April, totalling \$3,150.00. Although the tenant has testified that it was never her intention to place the burden of her hardship on anyone else, it certainly isn't the landlord's responsibility to bear such a burden. I find in favour of the landlord's monetary claim for unpaid rent, to recover the filing fee, and to offset his claim against the security deposit of \$787.50 plus interest of \$0.00.

Conclusion

I HEREBY FIND that the landlord is entitled to an Order of Possession effective **two days after service on the tenant**. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

I HEREBY FIND in favor of the landlord's monetary claim as follows:

Unpaid Rent March \$1,575.00 April \$1,575.00	\$3,150.00
Filing fee	50.00
Sub total (Monetary Order in favor of The landlord)	\$3,200.00
Less Security Deposit of \$787.50 plus Interest of \$0.00	- 787.50
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$2,412.50

The copy of the landlord's decision will be accompanied by a Monetary Order for \$2,412.50. 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: April 21, 2009.

Dispute Resolution Officer