

## **DECISION**

Dispute Codes      OPR MNSD 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 claim for unpaid rent, to keep all or part of the pet and or security deposit, and to recover the cost of the filing fee from the tenants for this application.

Service of the hearing documents, by the landlord to each tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on April 16, 2009. Mail receipt numbers were provided in the landlord's verbal testimony. The tenants were deemed to be served the hearing documents on April 21, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

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

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 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 retain the security deposit in partial satisfaction of their claim pursuant to section 72 of the *Act*.

### Background and Evidence

The tenancy began on October 1, 2008 and ended on April 28, 2009, with rent payable on the first of each month in the amount of \$2,400.00. The tenants paid a security deposit of \$1,200.00 and a pet deposit of \$1,200.00 on September 19, 2008.

The landlord has requested to withdraw their application for an Order of Possession and for loss of rent for May, 2009, as the tenants vacated the rental unit on April 28, 2009.

The landlord testified that he personally served the female tenant with the 10 Day Notice to End Tenancy on April 3, 2009 at 9:45 a.m.

The landlord testified that he received two letters, one from each tenant, stating that the tenants allow the landlord to retain the security and pet deposits for payment of April 2009 rent.

The landlord stated that the tenants did not provide him with a forwarding address but that the landlord suspects the tenants have moved to Alberta.

The landlord is requesting a monetary order for April 2009 rent in the amount of \$2,400.00, a \$25.00 late payment fee, and the \$50.00 for the cost of the filing fee.

### 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 landlord 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 has withdrawn his application for an order of possession as the tenants have vacated the rental unit.

**Claim for unpaid rent.** The landlord claims for unpaid rent of \$2,400.00 for April 2009, pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due. I find that the tenants have failed to comply with a material term of the tenancy agreement which stipulates that rent is due monthly on the first of each month.

**Late Payment Fee** – The landlord submitted documentary evidence in support of their claim that the tenancy agreement stipulates that the tenants are responsible to pay a late payment fee of \$25.00 in accordance with section 7 of the *Residential Tenancy Regulations*.

**Filing Fee \$50.00.** I find that the landlord has succeeded in large and that he should recover the filing fee from the tenants.

**Claim to keep all or part of security and pet deposits.** I find that the landlord's claim meets the criteria under section 72(2)(b) of the *Act* and order this monetary claim to be offset against the tenant's security deposit of \$1,200.00 and the pet deposit of \$1,200.00 plus interest of \$10.23 for a total of \$2,410.23.

**Monetary Order** – I find that the landlord is entitled to a monetary claim, that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenants' security deposit, and that the landlord is entitled to recover the filing fee from the tenants as follows:

Unpaid Rent for April 2009	\$2,400.00
Late payment fee	25.00
Filing fee	50.00
Sub total (Monetary Order in favor of the landlord)	<b>\$2,475.00</b>
Less Security and Pet Deposits plus interest	-2,410.23
<b>TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD</b>	<b>\$64.77</b>

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 \$64.77. The order must be served on the tenants and is enforceable through the Provincial Court 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: May 26, 2009.

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Dispute Resolution Officer