

DECISION

Dispute Codes OPR MNR MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord 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, and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents was done in accordance with section 89 of the *Act*, sent via registered mail, to the Tenant's forwarding address, on June 19, 2009. The Canada Post tracking number was provided in the Landlord's verbal testimony. The Tenant is deemed to be served the hearing documents on June 24, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

The Witness testified that the Tenant told him that she was moving out of the rental unit and into her parent's home. The Landlord testified that the Tenant's parent's address was provided to the Landlord at the onset of the tenancy.

The Landlord appeared, gave affirmed testimony, was provided the opportunity to present their evidence orally, in writing, and in documentary form. The Tenant did not appear despite being served notice of today's hearing in accordance with the *Act*.

All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession and a Monetary Order under Sections 38, 55, 67, and 72 of the *Residential Tenancy Act*?

Background and Evidence

The month to month tenancy began on September 1, 2008 and ended on or about June 22, 2009 when the Tenant vacated the rental unit. Rent was payable on the first of each month in the amount of \$950.00 and the Tenant paid a security deposit of \$475.00 on August 5, 2008.

The Landlord testified that a move-in inspection report was completed on September 1, 2008 in the presence of the Tenant and that the move-out inspection report was completed on June 23, 2009 in the absence of the Tenant after the Tenant abandoned the rental unit.

The Landlord withdrew her request for an Order of Possession as the Tenant has vacated the rental unit.

The Landlord argued that the Tenant failed to pay the monthly rent for May and June 2009 and on June 9, 2009 at 5:50 p.m. the Landlord posted a 10 Day Notice to End Tenancy for unpaid rent on the Tenant's door.

The Landlord is seeking \$950.00 unpaid rent and \$25.00 late fee for both May 2009 and June 2009.

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 withdrew her request for an Order of Possession.

Claim for unpaid rent. The landlord claims for unpaid rent of \$950.00 for May 2009 and \$950.00 for June 2009, 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 material term of the tenancy agreement which stipulates that rent is due monthly on the first of each month.

Claim for Late Fees – The Landlord claimed \$25.00 for May and June 2009 as late payment fees however the Landlord failed to provide evidence in support of this claim. Based on the aforementioned I hereby dismiss the Landlord's claim.

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

Claim to keep all or part of security deposit. 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 \$475.00 plus interest of \$2.90 for a total of \$477.90.

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 Tenant's security deposit, and that the Landlord is entitled to recover the filing fee from the Tenant as follows:

Unpaid Rent for May 2009 and June 2009 (\$950.00 x 2)	\$1,900.00
Filing fee	<u>50.00</u>
Sub total (Monetary Order in favor of the landlord)	\$1,950.00
Less Security Deposit of \$475.00 plus interest of \$2.90	-477.90
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$1,472.10

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 \$1,472.10. The order must be served on the Respondent Tenant 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: July 29, 2009.

Dispute Resolution Officer