

DECISION

Dispute Codes OPR MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord seeking an Order of Possession for unpaid rent and a Monetary Order for unpaid rent, money owed for damage or loss under the Act, to keep the security deposit in partial satisfaction of the claim, and to recover the cost of the filing fee from the Tenants for this application.

Service of the hearing documents was done in accordance with section 89 of the *Act*, served personally by the Landlord to the Tenants at the rental unit on October 20, 2009.

The Landlord appeared, gave affirmed testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form. No one attended the hearing on behalf of the Tenants, despite being served notice of the hearing in accordance with the Residential Tenancy Act (Act).

All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

Is the Landlord entitled to Orders under sections 38, 55, 67, and 72 of the *Residential Tenancy Act*?

Background and Evidence

The fixed term tenancy commenced on July 1, 2009 and is set to expire on June 30, 2010. The Tenants paid a security deposit in the amount of \$497.50 on June 11, 2009 and rent is payable on the first of each month in the amount of \$995.00.

The Landlord testified that the Tenants have been late in paying rent. When the Tenants failed to pay the October 2009 rent in full a 10 Day Notice to End Tenancy listing a move out date of October 12, 2009, was issued by the Landlord and posted on the Tenants' door on October 2, 2009.

The Landlord argued that since the 10 Day Notice to End Tenancy was issued the Tenants made payments towards their rent and receipts were issued to the Tenants for

“use and occupancy only” as follows: October 7, 2009 for \$700.00; October 28, 2009 for \$315.00; November 1, 2009 for \$440.00; and November 6, 2009 for \$575.00.

The Landlord advised that the current arrears total \$1,015.00 and is comprised of \$995.00 for December 2009 rent and the \$20.00 December late fee as provided for in section 3(a) of the tenancy agreement.

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 Tenants.

Order of Possession. I find that the Landlord has met the requirements for the 10 day notice to end tenancy pursuant to section 46(1) of the *Act*, that the Tenants failed to pay the rent in full within 5 days after receiving this notice, and that the Tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit to which the notice relates pursuant to section 46(5) of the *Act*.

Claim for unpaid rent. The Landlord claims for unpaid rent of \$995.00 for December 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 and that the Landlord has proven the test for damage or loss under the *Act* and I hereby approve his claim of \$995.00 of unpaid rent.

Late Payment Fees. The Landlord is seeking \$20.00 for late payment fees for December 2009 as provided for in # 3(a) of the tenancy agreement which is in compliance with section 7 of the Residential Tenancy Regulation. Based on the aforementioned I find that the Landlord has proven her claim and I hereby approve her request of \$20.00 in late payment fees.

Filing Fee \$50.00. The Landlord has been successful with her application and I find that she is entitled to recover the \$50.00 filing fee from the Tenants.

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 Tenants' security deposit of \$497.50 plus interest of \$0.00 for a total of \$497.50.

Monetary Order – I find that the Landlord is entitled to a monetary claim as follows:

Unpaid Rent for December 2009	\$995.00
Late Payment fee for December 2009	20.00
Recovery of the filing fee	<u>50.00</u>
Subtotal (Monetary Order in favor of the Landlord)	\$1,065.00
Less Security Deposit of \$497.50 plus interest of \$0.00	-497.50
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$567.50

Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenants**. This order must be served on the Tenants 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. A copy of the Landlord's decision will be accompanied by a Monetary Order for \$567.50. 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: December 03, 2009.

Dispute Resolution Officer