

## DECISION

Dispute Codes      OPR MNR MNSD FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution one application filed by the Landlord and the other filed by the Tenant.

The Landlord is 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.

The Tenant is seeking an Order to cancel notices issued for cause and unpaid rent.

Service of the hearing documents by Landlord to Tenant was done in accordance with section 89 of the *Act*, served personally by the Landlord's Agent to the Tenant on November 23, 2009 at 9:00 p.m. in the presence of the Landlord.

The Landlord's Agent, (Agent) appeared, provided affirmed testimony, was given the opportunity to provide their evidence orally and in documentary form.

The Tenant did not appear despite being served with notice of today's hearing, in accordance with the *Act* and despite filing her own application for dispute resolution.

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*?

Is the Tenant entitled to Orders under sections 46 and 47 of the *Residential Tenancy Act*?

### Background and Evidence

The tenancy was a month to month term commencing on May 1, 2009. The Tenant paid a security deposit in the amount of \$1,000.00 on April 12, 2009 and the current rent in the amount of \$1,950.00 is payable on the last day of every month.

The Agent testified that when the Tenant failed to pay rent for September 2009 a 10 Day Notice to End Tenancy was issued on September 4, 2009 and the Tenant paid the rent in full by October 15, 2009. The Agent argued that when the Tenant failed to pay the rent due on October 31, 2009, for November 2009 rent, another 10 Day Notice to End Tenancy was issued on November 13, 2009 and served personally to the Tenant by the Agent on November 13, 2009 at 6:49 p.m. in the presence of a witness.

The Agent stated that they are seeking a monetary order for November and December unpaid rent of \$3, 900.00 (2 x \$1950.00), the filing fee, and an Order of Possession.

There was no additional evidence or testimony provided for the Tenant's application, as there was no one in attendance on behalf of the Tenant, at the scheduled hearing.

### Analysis

#### **Landlord's Application**

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 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 Tenant failed to pay the rent within 5 days after receiving this notice, and that the Tenant is 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 \$1,950.00 for November 2009 and \$1,950.00 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 Tenant has failed to comply with a material term of the tenancy agreement which stipulates that rent is due monthly on the last day of each month.

**Filing Fee \$50.00-** I find that the Landlord has succeeded with their application and is entitled to recover the cost of 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 \$1,000.00 plus interest of \$0.00.

**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 November 2009 and December 2009 (2 x \$1950)	\$3,900.00
Filing fee	<u>50.00</u>
Sub total (Monetary Order in favor of the landlord)	<b>\$3,950.00</b>
Less Security Deposit of \$1,000.00 plus interest of \$0.00 from April 12, 2009 to December 29, 2009.	-1,000.00
<b>TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD</b>	<b>\$2,950.00</b>

### Tenant's Application

Section 61 of the *Residential Tenancy Act* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the Director must determine if the hearing is to be oral or in writing. In this case, the hearing was scheduled for an oral teleconference hearing.

In the absence of the applicant Tenant, the telephone line remained open while the phone system was monitored for ten minutes and no one on behalf of the applicant Tenant called into the hearing during this time. Based on the aforementioned I find that the Tenant has failed to present the merits of her application and the application is hereby dismissed, without leave to reapply.

### 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. A copy of the Landlord's decision will be accompanied by a Monetary Order for \$2,950.00. 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*.

I HEREBY DISMISS the Tenant's application, without leave to reapply.

Dated: December 29, 2009.

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Dispute Resolution Officer