



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MNR MNSD OPR FF

Introduction

This hearing was scheduled in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, to retain all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution. At the hearing the Agent for the Landlord withdrew her application for an Order of Possession, due to the fact the Tenant has vacated the rental unit.

The Agent for the Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were personally delivered to the male Tenant on December 10, 2008 and to the female Tenant on December 12, 2008. These documents are deemed to have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Tenant did not appear at the hearing.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to a monetary Order for unpaid rent; to keep all or part of the security deposit; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 55, 67, and 72 of the *Act*.

Background and Evidence

The Landlord submitted a tenancy agreement that establishes the Tenant is required to pay monthly rent of \$1,250.00. The Agent for the Landlord stated that a security deposit of \$625.00 was paid on February 28, 2008.

The Agent for the Landlord stated that a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of December 12, 2008, was placed under the door of the rental unit on December 02, 2008. The Agent for the Landlord stated that the Tenant vacated the rental unit on December 28, 2008.

The Agent for the Landlord stated that the Tenant still owes \$1,250.00 in rent from December of 2008.

The Landlord is claiming compensation for a late payment of rent for December, at a rate of \$5.00 per day. The Landlord submitted no evidence to establish that the Tenant agreed to pay a penalty for paying rent late.

Analysis

In the absence of evidence to the contrary, I find that the Tenant has not paid rent in the amount of \$1,250.00 for December of 2008, and that the Landlord is entitled to compensation in that amount.

Section 7(1)(d) of the Regulation stipulates that a landlord can charge a fee of not more than \$25.00 for a late rent payment. Section 7(2) of the Regulation stipulates that a landlord can only charge this fee if the tenancy agreement provides for this fee. As there is no evidence that the Tenant agreed to pay a fee for late rent payments, as

required by section 7(2) of the Regulation, I find that the Landlord is not entitled to collect a fee for late rent payments. I hereby dismiss the Landlord's application for \$55.00 for a late rent payment.

I find that the Landlords application has merit, and I find that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$1,300.00, which is comprised on \$1,250.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. I find that the Landlord is entitled to retain the Tenant's security deposit plus interest, in the amount of \$632.10, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$667.90. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Dated: January 08, 2009