



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's request for an Order of Possession for unpaid rent, a Monetary Order for unpaid rent and late fees, retention of the security deposit and pet deposit and recovery of the filing fee. The tenant did not appear at the hearing. The landlord testified that the tenant was personally served with notification of today's hearing on March 5, 2009 at the rental unit. Having been satisfied that the landlord adequately served the tenancy in accordance with the requirements of the Act, the hearing proceeded without the tenant present.

At the commencement of the hearing the landlord testified that the tenant had vacated the rental unit and the landlord no longer required an Order of Possession. The landlord's application was amended accordingly and the remainder of this decision pertains to the landlord's monetary claim.

Issues(s) to be Decided

1. Has the landlord established an entitlement to unpaid rent and late fees, and if so the amount?
2. Retention of the security deposit and pet deposit.
3. Award of the filing fee.

Background and Evidence

Upon hearing undisputed testimony of the landlord I make the following findings. The tenancy commenced November 1, 2008 and the tenant was required to pay rent of \$760.00 on the first day of every month. The tenant had paid a security deposit of



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\$380.00 and a pet deposit of \$200.00 on November 1, 2008. On February 3, 2009 the landlord served the tenant with a *10 Day Notice to End Tenancy for Unpaid Rent* (the Notice) by sliding it under the tenant's door. The Notice indicated that rent of \$760.00 was outstanding as of February 1, 2009 and had an effective date of February 13, 2009. The tenant vacated the rental unit on March 27, 2009.

The landlord is seeking to recover unpaid rent of \$760.00 for February 2009 and loss of rent of \$760.00 for March 2009 as well as late fees of \$25.00 for each of those months. The landlord provided a copy of the 10 Day Notice but did not provide a copy of the tenancy agreement. The landlord testified that the tenancy agreement provides for the payment of late fees.

Analysis

Upon consideration of the evidence before me, I am satisfied that the tenancy ended on February 16, 2009. The Notice reflects an effective date of February 13, 2009; however, the tenant was not personally served the Notice on February 3, 2009 and the Notice is deemed to be received by the tenant three days later. Accordingly, in order to comply with the Act, the Notice is automatically changed to read February 16, 2009.

I am satisfied that the landlord is entitled to recover unpaid rent of \$760.00 from the tenant for the month of February 2009 and since the tenant did not vacate until the end of March 2009 I award the landlord loss of rent for the month of March 2009. I deny the landlord's request for late fees as the landlord did not provide a copy of the tenancy agreement to substantiate the provision for late fees in the tenancy agreement.

As the landlord was largely successful with this application, I also award the filing fee to the landlord. The landlord is authorized to retain the tenant's security deposit and pet



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deposit, along with accrued interest, in partial satisfaction of the rent owed by the tenant. I provide for the landlord with this decision a Monetary Order calculated as follows:

Unpaid rent – February 2009	\$ 760.00
Loss of rent – March 2009	760.00
Filing fee	50.00
Less: security deposit and interest	(380.95)
Less: pet deposit and accrued interest	<u>(200.50)</u>
Monetary Order	<u>\$ 988.55</u>

The landlord must serve the Monetary Order upon the tenant and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The landlord is authorized to retain the tenant's security deposit and pet deposit in partial satisfaction of the amounts owed to the landlord. The landlord is also provided with a Monetary Order in the amount of \$988.55.

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: April 30, 2009.

Dispute Resolution Officer