

# Dispute Resolution Services

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

## **DECISION**

### **Dispute Codes:**

OPR, MNR, MNDC, FF, SS

### **Introduction**

This hearing was convened in response to an application by the landlord for an Order of Possession due to unpaid rent, a Monetary Order to recover rental arrears and inclusive of recovery of the filing fee associated with this application, and an order for substituted service.

Despite having been personally served with the application for dispute resolution and notice of hearing on March 11, 2009 in accordance with Section 89 of the Residential Tenancy Act (the Act) the tenant did not participate in the conference call hearing.

The tenant vacated the rental unit on March 31, 2009. As the tenants have moved from the rental unit, this decision will only deal with matters pertaining to the monetary claim.

The landlord's portion of the application for substitute service was not pursued prior to this hearing.

As to the monetary claims, the landlord amended the application after the tenant vacated to include loss of revenue for the month of April 2009 as well as a quantum of utilities for April 2009.

### **Issue(s) to be Decided**

Is the landlord entitled to the monetary amounts claimed?

## **Background and Evidence**

The tenancy began on August 15, 2008. Rent in the amount of \$1050 is payable in advance on the first day of each month. The tenant failed to pay rent in the month of February 2009 and on February 01, 2009 the landlord served the tenant with a notice to end tenancy for non-payment of rent. The tenant further failed to pay rent in the month of March 2009.

The landlord is claiming late fees for February and March in the amount of **\$50** per month (\$100), as stipulated in the tenancy agreement. The quantum of the landlord's monetary claim for unpaid rent is **\$2100**.

The landlord further makes a claim for loss of revenue for the month of April 2009 testifying the tenants moved on March 31, and left behind an unclean suite requiring considerable work toward remediation of the suite to rentable condition. The landlord claims the rental unit was not in a condition to be rented again by April 15, 2009, but did not supply evidence in support of efforts to make the rental unit available or efforts to advertise the rental unit for April 15, 2009.

## **Analysis**

The landlord's portion of the application requesting substitute service to serve documents or evidence in a different way than required by the Act is dismissed.

The landlord's portion of the application in respect to all utilities, as well as purported cleaning costs on the tenant vacating were not supported by evidence nor was evidence of this claim served upon the tenant.

The landlord is hereby given leave to reapply in respect to these claims.

The landlord's claim for late fees in the amount of \$50 each are hereby denied. Section 6(3) (b) of the Act, and Section 7(1) (d) of the Regulations prohibits the landlord from charging more than \$25 for late payment of rent, and only if the tenancy agreement provides for this fee. The requirement to pay \$50 as a late fee is an unconscionable term and is unenforceable.

**I find** that the landlord has established a claim for **\$2100** in unpaid rent for February and March 2009.

Section 7 of the Act requires the landlord to mitigate and minimize any loss of revenue.

The landlord has not supported a claim for loss of revenue for a full month.

**I find** the landlord is entitled to one half month's rent as compensation for loss of revenue for the month of April 2009, in the amount of **\$525**.

The landlord is also entitled to recovery of the **\$50** filing fee, for a total entitlement of **\$2675**

### **Conclusion**

I grant the landlord an order under section 67 for **\$2675**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated May 05, 2009