



Dispute Resolution Services

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

DECISION AND REASONS

Dispute Codes: *MNR, MND, MNSD, FF*

Introduction

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for a monetary order for unpaid rent for October, November and December 2008, for late fees, for the cost to remove abandoned items and for the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of her monetary claim.

The rental unit was rented by co tenants (CD and SC). On November 30, 2008, the tenants gave the landlord adequate notice to end the tenancy by way of a hand written note. The note also contained the forwarding address of the tenants.

Prior to this application, within 15 days of the end of the tenancy, the landlord filed an application for dispute resolution. She mailed the notice of hearing to the forwarding address as provided by the tenants, in writing. SC was no longer residing at that address and therefore did not attend the hearing. For this and other reasons, the application was dismissed with leave to reapply.

The landlord reapplied and sent the notice of hearing to the same forwarding address. CD attended the hearing while SC did not. Since the landlord was aware that SC had moved from that address, I find that SC was not properly served with the application for dispute resolution and notice of hearing and accordingly dismiss the landlord's claim as against SC.

However, since co-tenants are jointly and severally liable for any debts or damages relating to the tenancy, the hearing was conducted in the absence of SC and the landlord's claim will be processed as against CD.

Both parties were given full opportunity to present evidence and make submissions.

Issues to be decided

Has the landlord met the landlord's burden of proof that loss was incurred due to the tenant's violation of the Act or tenancy agreement?

Is the landlord entitled to a monetary order to recover unpaid rent, late fees, cost of garbage removal and the filing fee? Is the landlord entitled to retain the security deposit in satisfaction of this claim?

Background and Evidence

The tenancy started on August 01, 2008 and ended on December 31, 2008. The rental unit was rented by co tenants CD and SC. Prior to moving in, the tenants paid a security deposit of \$575.00. The monthly rent was \$1150.00 due on the first day of each month. A clause in the tenancy agreement states that late payment of rent will incur a late fee of \$25.00

The landlord testified that the tenant's rent cheques for October and November were returned for insufficient funds. Rent for December was partially paid. The landlord stated that CD paid his share of December's rent directly to the landlord in the amount of \$575.00. The tenants moved out on December 31, 2008 and left behind some items of furniture that were removed at the landlord's cost. The landlord has filed a receipt in the amount of \$109.20 for costs incurred to remove the abandoned items.

The landlord is claiming the following:

1.	Rent for October 2008	\$1150.00
2.	Rent for November 2008	\$1150.00
3.	Rent for December 2008	\$575.00
4.	Late fees for three months	\$75.00
5.	Removal of abandoned items	\$109.20
6.	Filing fee	\$50.00
	Total	\$3109.20

The tenant testified that every month, he paid his share of rent to SC in cash. SC paid the total rent by way of a personal cheque directly to the landlord. CD stated that after

rent cheques for October and November were returned for insufficient funds, he paid his share of rent for December directly to the landlord. CD agreed that some items of furniture were left behind.

Analysis

Section 26 of the *Residential Tenancy Act*, states that a tenant must pay rent when it is due under the tenancy agreement. The tenant agreed that rent and late fees were owed to the landlord. The tenant also agreed that some items of furniture were abandoned in the rental unit.

I find that the landlord has established a claim for rental arrears (\$2875.00), late fees (\$75.00) and the cost to remove the abandoned items (\$109.20). Since the landlord has proven her case she is also entitled to the filing fee (\$50.00).

I order that the landlord retain the security deposit of \$575.00 and accrued interest of \$5.80 in partial satisfaction of the claim, and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$2528.40

Conclusion

I grant the landlord a monetary order in the amount of **\$2528.40**. This order may be filed in the Small Claims Court and enforced as an order of that court.

Dated June 25, 2009.

Dispute Resolution Officer