

Dispute Resolution Services

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

DECISION AND REASONS

Dispute Codes: OPR, MNR, MNSD, MNSD, FF

Introduction

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for an order of possession, a monetary order for unpaid rent, , to retain the security deposit and to recover the filing fee.

The notice of hearing dated May 12, 2009 was served on the tenant on May 14, 2009, by registered mail. Despite having been served the notice of hearing, the tenant did not attend the hearing. The landlord attended the hearing and was given full opportunity to present evidence and make submissions.

At the start of the hearing the landlord stated that the tenant had paid all the outstanding dues on May 16, 2009, except for \$75.00 owed in late fees. The landlord amended the amount of her application for a monetary order, to \$75.00.

Issues to be decided

Is the landlord entitled to an order of possession? Is the landlord entitled to a monetary order to recover unpaid late fees, retain the security deposit and recover the filing fee?

Background and Evidence

The landlord testified that the tenancy started on September 01, 2008. The monthly rent is \$875.00 due in advance on the first of each month. The tenant paid a security deposit in the amount of \$437.50.

The tenant failed to pay rent for May 2009 and on May 03, 2009; the landlord served the tenant, with a ten day notice to end tenancy, by posting the notice on the front door. The tenant paid rent on May 16, 2009 and has also paid rent for June 2009. The landlord issued receipts for use and occupancy only.

A clause in the rental agreement states that the tenant will be required to pay a late fee of \$25.00, when rent is not paid on the day it is due. The tenant was late on rent for the months of February, March and April and thereby incurred a charge of \$75.00.

The landlord is applying for an order of possession with an effective date of June 30, 2009 and a monetary order in the amount of \$125.00 which consists of \$75.00 for late fees and \$50.00 for the filing fee.

Analysis

Based on the undisputed sworn testimony of the landlord, I accept the landlord's evidence in respect of the claim. The tenant received the notice to end tenancy for unpaid rent, on May 03, 2009 and did not pay rent within five days of receiving the notice to end tenancy nor did the tenant make application, pursuant to Section 46 to set aside the notice to end a residential tenancy, and the time to do so has expired.

In these situations, the *Residential Tenancy Act* provides that the tenant has been deemed to have accepted the end of the tenancy, on the date set out in the Notice. Pursuant to section 55(2) I am issuing a formal order of possession with an effective date of June 30, 2009. The Order may be filed in the Supreme Court for enforcement.

I find that the landlord has established a claim of \$75.00 for late fees and \$50.00 for the filing fee. I order that the landlord retain \$125.00 from the security deposit in full satisfaction of her monetary claim.

Conclusion

I grant the landlord an order of possession with an effective date of **June 30, 2009** and I order the landlord to retain **\$125.00** from the security deposit.

Dated June 18, 2009.

Dispute Resolution Officer