



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This matter dealt with an application by the landlord for an Order of Possession pursuant to Section 55(2) and a Monetary Order for unpaid rent and utilities pursuant to Section 67 and to recover the filing fee for this proceeding. The landlord applied to amend his application to include a request to keep all or part of the tenants security deposit pursuant to section 38(1)(d). Due to the nature of the request I have allowed this. At the outset of the hearing the landlord confirmed that the tenants have moved from the rental property and as a result they abandoned their application for an Order of Possession.

Service of the hearing documents was done in accordance with section 89 of the *Act*. They were sent to the tenant by registered mail on May 06, 2009. Mail receipt numbers were provided by the landlord and I was able to verify that the documents were sent but not collected by the tenant. The tenant is deemed to be served the hearing documents on May 11, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlords agent appeared, gave affirmed testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form.

There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*.

All of the testimony and documentary evidence was carefully considered.

I

Issues(s) to be Decided

Are there arrears of rent and utilities and if so, how much?

Is the landlord entitled to retain the tenants' security deposits in payment of rent owed?

Is the landlord entitled to a Monetary Order to recover the filing fee?

Background and Evidence

This tenancy started on July 10, 2008. It is a fixed term tenancy ending on June 30, 2009. Rent for this property is \$3,500.00 per month payable on the 1st day of each month. The tenant paid a security deposit of \$1,750.00 on July 04, 2008 and a garden and maintenance deposit of \$1,750.00 on July 04, 2008. The tenant has not paid rent for May, 2009 of \$3,500.00. The tenant was responsible for paying the utility bills as per the tenancy agreement and the remaining bills outstanding for March and April total \$360.93.

The landlord states that the tenant has always paid his rent at the end of each month in advance for the proceeding month. The landlord states that when he went to collect the rent for May, 2009 there was no reply at the house. The landlord believed at that time that the tenant may have abandoned the property. The landlord took the opportunity to look through the windows and found that most of the tenants' belongings and household effects had been removed. The landlord waited until late in the day of May 01 when the rent was due as per the tenancy agreement and issued a 10 Day Notice to End Tenancy by posting this on the tenants' door. The landlord was premature in issuing the 10 day Notice but as he believed at this time that the tenant had abandoned the property I will allow this. This Notice is deemed to have been served to the tenant on the 3rd day after posting pursuant to section 90(a) of the Act.

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The landlord made every attempt to contact the tenant by telephone and e-mail. E-mails were returned as unknown and the telephone answer system was not activated. On May 02, 2009 the landlord returned to the house to confirm if the tenant had abandoned the property and again looked through the windows and doors. The landlord believes that the tenant has not returned to the property since that time.

Analysis

I find that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the rent nor apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, I find that the tenant is conclusively presumed, under section 46(5) of the Act, to have accepted that the tenancy ended on the effective date of the Notice. However, the landlord states that the tenant has abandoned the property pursuant to section 24(1) of the *Residential Tenancy Regulations* and therefore does not require an Order of Possession at this time.

The landlord has been able to prove that the tenant has not paid rent for May, 2009. As the tenant did not inform the landlord that he was vacating the property the landlord is entitled to a Monetary Order until the end of June when the tenancy would have ended as per the tenancy agreement pursuant to s.45. As the landlord had issued a 10 Day Notice to End Tenancy for unpaid rent with a date to vacate the premises by May 11, 2009 the landlord would be entitled to rent payments up to and including this date. However, due to the tenant abandoning the property the landlord will have to re-advertise and will incur loss of revenue for May 2009. Therefore, I uphold the landlords

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claim to recover the cost of rent for May, 2009 and for utilities that have not been paid for March and April, 2009. I find pursuant to Section 38, that the landlord may retain the full security deposit plus interest and the garden maintenance deposit plus interest towards the outstanding rent.

As the landlord has been successful in this matter he is entitled to recover his filing fee for this application. A Monetary Order will be issued for the following:

Loss of revenue for May	\$3,500.00
Filing fee	50.00
Less security deposit and accrued interest	(-\$1,762.98)
Less garden maintenance deposit	(-\$1,762.98)
Total amount due	\$\$384.97

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$384.97**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

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: June 10, 2009.

Dispute Resolution Officer