

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on June 16, 2009. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant was deemed to be served the hearing documents on June 21, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave affirmed testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form. At the outset of the hearing the landlord confirmed that the tenant has moved out of the rental unit and therefore they withdraw their application for an Order of Possession.

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.

### Issues(s) to be Decided

- Are there arrears of rent and if so, how much?
- Is the landlord entitled to a Monetary Order for loss of income?
- Is the landlord entitled to keep all or part of the security deposit and interest?
- Whether the landlord is entitled to a Monetary Order to recover the filing fee?

### Background and Evidence

This tenancy started on April 21, 2007. This started as a fixed term tenancy for one year and has reverted to a month to month tenancy. Rent is now \$803.67 per month payable on the 1<sup>st</sup> of each month. The tenant paid a security deposit of \$387.50 on April 24, 2007. The tenant did not pay rent for May, 2009 and a 10 Day Notice to End Tenancy was issued on May 19, 2009 with a move out day of June 03, 2009. The tenant did not pay the rent or apply for Dispute resolution. The tenant did not pay rent for June, 2009 and left the property on June 17, 2009.

The tenancy agreement contains a clause that informs the tenant that the landlord will charge \$25.00 for any month the rent is late. In this instance the landlord is claiming late fees for May and June, 2009. The landlord has applied for loss of revenue for the month of July, 2009. The landlord has cleaned and repaired damages to the rental unit and has advertised it for rent. It remains vacant.

The landlords conducted a move in condition inspection with the tenant and as the tenant left the rental unit without notifying the landlord or providing a forwarding address, the landlords conducted the move out inspection report in the tenants' absence.

### Analysis

In the absence of any evidence from the tenant, I find that the landlord is entitled to recover rent arrears for May and June, 2009 of \$1,607.34. I also find that the landlord is entitled to recover late fees for each month that the rent was late or unpaid of \$50.00. I order the landlord pursuant to s. 38(4) of the Act to keep the tenant's security deposit in partial payment of the rent arrears. As the landlord has been successful in this matter, they are also entitled to recover the \$50.00 filing fee for this proceeding.

The landlord will receive a monetary order for the balance owing as follows:

Outstanding rent for May and June, 2009	\$1,607.34
Filing fee	\$50.00
Less security deposit and accrued interest	(-\$397.38)
Total amount due to landlord	\$1,309.96

The landlord has taken steps to re-rent the unit for July and as yet it remains un-rented. The landlord served the tenant with a 10 Day Notice to End Tenancy which was to take effect on June 03, 2009. The tenant did not dispute this and overstayed at the rental unit until June 17, 2009. In the event the tenant had moved out on June 03 the landlord would have had time to re-rent the unit as this was a month to month tenancy. The unit may still re-rent through the month of July and therefore it is premature for the landlord to recover a loss of revenue for this month at this time. I dismiss this portion of the landlords claim with leave to reapply.

### Conclusion

I HEREBY FIND in favor of the majority of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,309.96**. 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: July 07, 2009.

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Dispute Resolution Officer