



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

For the landlord – OPR, MNR, MNSD, FF

For the tenant – CNR, MNR, MNDC

Introduction

The hearing that was due to be held on June 15, 2009 was reconvened to today's date. An adjournment of the original hearing was allowed as the evidence that the landlord had faxed to the Residential Tenancy Branch did not come through complete and the tenants were unsure if they had received it. The adjournment was to allow the landlord time to re fax and resend these documents.

This hearing was set to deal with two applications for Dispute Resolution, one brought by the tenants and one brought by the landlord. The landlord seeks an Order of Possession for unpaid rent, a Monetary Order for unpaid rent and loss of revenue, to keep the security deposit and to recover the filing fee. At the outset of the hearing the landlord confirmed that the tenants have moved out. Therefore he withdraws his application for an Order of Possession.

I find that both parties were properly served pursuant to s. 89 of the *Act* with notice of this hearing. The tenants did not appear at the hearing despite being sent Notice of the reconvened date. The hearing continued in the tenants absence and the tenant's application is dismissed without leave to reapply.

Both parties were provided the opportunity to present evidence and make submissions. As the tenant did not appear the submissions were made by the landlord. On the basis of the evidence presented at the hearing, a decision has been reached.

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 unpaid rent and filing fee?

Background and Evidence

This tenancy started on November 01, 2008 and ended on June 01, 2009. This was a fixed term tenancy for three months which then reverted to a month to month tenancy. Rent for this unit was \$795.00 per month due on the 1st of each month. The tenants paid a security deposit of \$397.50 on October 24, 2008. At the beginning of the tenancy both parties carried out a move in inspection and a move out inspection was completed at the end of the tenancy.

The tenants did not pay rent for May, 2009. On May 02, 2009 the landlord served the tenants with a 10 Day Notice to End Tenancy. The tenants had five days to pay the rent or dispute the Notice. The tenants filed an application to dispute the Notice on May 07, 2009. The tenants appeared for the first hearing date scheduled for June 15, 2009 but have failed to appear for the reconvened hearing and their application is dismissed.

On May 01, 2009 the tenants sent the landlord a written Notice to end the tenancy due to mould issues. However, this Notice was vague and did not give a date when they would be moving from the unit. The tenants moved on June 01, 2009.

The landlord was unable to re-rent the unit until July 01, 2009 as he had to carry out some repairs and decoration of the unit. Due to this the landlord is claiming loss of revenue for June, 2009 of \$795.00

Analysis

The tenants did not appear at the hearing, despite having been sent a Notice of the reconvened hearing; therefore, in the absence of any submissions from the tenants, I find that the landlord is entitled to recover rent arrears for May, 2009 of \$795.00. Pursuant to s. 26(1) of the *Act* a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.

The tenants did not provide the landlord with a One Month Notice to End the Tenancy with a date they would be vacating the rental unit. The landlord was unable to re-rent the unit for June, 2009 as he was unsure which date the tenants would be vacating. Therefore, I find that the landlord is also entitled to recover a loss of revenue for June of \$795.00.

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, he is also entitled to recover the \$50.00 filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

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

Outstanding rent for May, 2009	\$795.00
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Filing fee	\$50.00
Less security deposit and accrued interest	(-\$398.62)
Total amount due to the landlord	\$1,241.38

Conclusion

The tenant's application is dismissed without leave to reapply.

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 **\$1,241.38**. The order must be served on the tenant 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 27, 2009.

Dispute Resolution Officer