



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a Monetary Order for unpaid rent, an Order to keep all or part of the security deposit and to recover the cost of the filing fee. At the outset of the hearing the landlord withdrew his application for an Order of Possession and a Monetary Order for damage or loss under the *Act* as the tenant has moved out of the rental property and the landlord has insufficient evidence to support his claim for damage or loss under the *Act*.

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 July 22, 2009. Mail receipt numbers were provided in the landlords' documentary evidence. The tracking information shows the tenant refused to accept the package. The tenant was deemed to be served the hearing documents on July 27, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave affirmed testimony, and 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.

Issues(s) to be Decided

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



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Background and Evidence

This tenancy started on April 01, 2008 and ended on August 16, 2009. This was a month to month tenancy. Rent is \$900.00 per month due on the 1st of each month. The tenant paid a security deposit of \$450.00 on March 24, 2008.

The tenant owed an unpaid late payment for June, 2009 of \$70.00 and did not pay rent for July, 2009 when it was due. The landlord issued a 10 Day Notice to End the Tenancy for unpaid rent on July 06, 2009. This was posted to the tenants' door and was deemed to have been served three days after posting. The tenant had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on July 19, 2009. The tenant made a payment on July 14, 2009 of \$520.00. This was credited against the \$70.00 owing for June and half of the July outstanding rent. This left a total of rent outstanding in July of \$450.00. The landlord accepted this payment for use and occupancy only. The tenant did not pay the outstanding rent or dispute the Notice within five days. On August 01, 2009 the rent was again due of \$900.00. This has left the balance of rent arrears at \$1,350.00. The unit was re-rented for September 01, 2009.

The landlord has applied to retain the tenants' security deposit in partial payment towards the rent arrears.

Analysis

The tenant did not appear at the hearing, despite having been sent a Notice of the hearing; she declined to collect this package from Canada Post. Therefore, in the absence of any evidence from the tenant, I find that the landlord is able to charge the tenant for rent for the whole month of August although the tenant left the rental unit on August 16, 2009, she overstayed at the unit after the date of the Notice to End Tenancy came into force. Therefore, I find that the landlord is entitled to recover rent arrears for August and the outstanding amount for July to a total amount of \$1,350.00 pursuant to s. 67 of the *Act*.



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The landlord has applied to keep the tenants' security deposit of \$450.00 plus accrued interest of \$5.22, to recover the amount owed by the tenant. **I Order** the landlord to retain **\$455.22** of the tenants' 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*. A monetary Order has been issued to the landlord for the following amount:

Outstanding rent, for July and August	\$1,350.00
Less security deposit and accrued interest	(-\$455.22)
Total amount due to the landlord	\$944.78

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 **\$944.78**. 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: September 04, 2009.

Dispute Resolution Officer