Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

OP, MNR, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, damages or loss, to retain all or part of the security deposit, and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The Agent for the landlord stated that on October 15, 2009 copies of the Application for Dispute Resolution and Notice of Hearing was sent to the tenant via registered mail at the address noted on the Application. The landlord provided a Canada Post tracking number as evidence of this attempted service. The landlord stated that the item was returned by the post office as unclaimed.

The landlord testified that on October 15, 2009 the tenant had left a voice mail message indicating that she could not afford the rental unit and would move out by the end of October. The Tenant had been issued a Notice to end Tenancy with an effective vacancy date of October 12, 2009.

The landlord stated that the tenant did attend a move-out condition inspection with the landlord on October 30, 3009 and that the tenant provided a forwarding address. The landlord testified that on November 16, 2009 the tenant was again served by registered mail with notice of this hearing to her new address. The landlord provided a Canada Post tracking number as evidence of service. The landlord stated that this mail has yet to be claimed by the tenant.

These documents are deemed to have been served in accordance with section 89 of the *Act,* however the tenant did not appear at the hearing.

Preliminary Matter

The landlord withdrew the request for an Order of possession as the tenant has now moved out of the rental unit. The landlord withdrew their claim for loss of November rent revenue.

Issue(s) to be Decided

Is the landlord entitled to a monetary Order for unpaid rent?

May the landlord retain the deposit paid in partial satisfaction of the monetary claim?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced on October 1, 2004. In July 2008 a new tenancy agreement was signed and rent was set at $1,244.00 per month. A deposit of $600.00 was paid on September 30, 2004.

The landlord provided a copy of a tenant ledger as evidence of rent payments made. The ledger indicates that since August 2009 the tenant has not paid rent. The landlord is claiming unpaid rent for August, September and October 2009 in the sum of $3,732.00, plus filing fee costs.

Analysis

In the absence of evidence to the contrary, I find that the tenant has not paid rent in the sum of $3,732.00 for August, September and October, 2009 rent owed and that the landlord is entitled to compensation in that amount.

I find that the landlord may retain the deposit plus interest in the sum of $621.25 in partial satisfaction of the claim for compensation.

I find that the landlord's application has merit, and I find that the landlord is entitled to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Conclusion

I find that the landlord has established a monetary claim, in the amount of $3,782.00 in compensation for August, September, October 2009 rent and the filing fee costs of $50.00 paid by the landlord for this Application for Dispute Resolution.

I order that the Landlord retain the deposit and interest of $621.25 in partial satisfaction of the claim and I grant the Landlord an order under section 60 for the balance due of **$3,160.75**. This order may be filed in the Provincial Court (Small Claims) and enforced 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: November 30, 2009.

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Dispute Resolution Officer